

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-3

Registration statement for specified transactions by certain issuers

Filing Date: **1994-01-21**  
SEC Accession No. **0000950135-94-000010**

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### FILER

#### **DIGITAL EQUIPMENT CORP**

CIK: **28887** | IRS No.: **042226590** | State of Incorporation: **MA** | Fiscal Year End: **0630**  
Type: **S-3** | Act: **33** | File No.: **033-51987** | Film No.: **94502211**  
SIC: **3570** Computer & office equipment

Business Address  
*146 MAIN ST  
MAYNARD MA 01754  
6178975111*

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON JANUARY 21, 1994  
REGISTRATION NO. 33-

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM S-3  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

<TABLE>

DIGITAL EQUIPMENT CORPORATION  
(Exact name of Registrant as specified in its charter)

<S> MASSACHUSETTS (State or other jurisdiction of incorporation or organization)	<C> 04-2226590 (I.R.S. Employer Identification No.)
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</TABLE>

146 MAIN STREET, MAYNARD, MASSACHUSETTS 01754-25711  
(508) 493-5111  
(Address, including zip code, and telephone number, including area code, of  
Registrant's principal executive offices)

GAIL S. MANN, ESQ.  
SECRETARY AND CLERK  
DIGITAL EQUIPMENT CORPORATION  
MSO2-3/F13  
111 Powdermill Road  
Maynard, Massachusetts 01754  
(508) 493-2206

(Name, address, including zip code, and telephone number, including area code,  
of agent for service)

Copies to:

<TABLE>

<S> RICHARD J. TESTA, ESQ. TESTA, HURWITZ & THIBEAULT Exchange Place 53 State Street Boston, Massachusetts 02109 (617) 248-7000	<C> RICHARD E. FLOOR, ESQ. GOODWIN, PROCTER & HOAR Exchange Place 53 State Street Boston, Massachusetts 02109 (617) 570-1000
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APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time  
to time after the effective date of this Registration Statement, as the  
Registrant shall determine.

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

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

<TABLE>

CALCULATION OF REGISTRATION FEE

<CAPTION>

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED	PROPOSED MAXIMUM OFFERING PRICE PER SHARE	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE (1)	AMOUNT OF REGISTRATION FEE
<S>	<C>	<C>	<C>	<C>
Debt Securities.....				
Preferred Stock.....				
Depository Shares.....				
Common Stock(3).....				
Warrants to Purchase Securities...				
Total.....	(2)	(2)	\$1,000,000,000	\$ 344,828

<FN>

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o).

(2) Not applicable pursuant to General Instruction II(d) to Form S-3 under the Securities Act of 1933.

(3) The Registrant is registering an indeterminable number of shares of Common Stock as may be issued, from time to time, upon exercise of Warrants to purchase Common Stock or upon conversion of convertible Preferred Stock or convertible Debt Securities.

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

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2

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

SUBJECT TO COMPLETION, DATED JANUARY 21, 1994

PROSPECTUS

DIGITAL EQUIPMENT CORPORATION

DEBT SECURITIES  
PREFERRED STOCK  
DEPOSITARY SHARES  
WARRANTS TO PURCHASE SECURITIES

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Digital Equipment Corporation (the "Corporation") may offer from time to time together or separately up to \$1,000,000,000 in the aggregate of (a) its unsecured debt securities (the "Debt Securities"), which may be either senior debt securities (the "Senior Debt Securities") or subordinated debt securities (the "Subordinated Debt Securities"), (b) shares of preferred stock, par value \$1.00 per share (the "Preferred Stock"), of the Corporation in one or more series, (c) depository shares of the Corporation (the "Depository Shares"), or (d) warrants to purchase capital stock or Debt Securities of the Corporation or other securities (the "Warrants"), each on terms to be determined at the time of sale. The Subordinated Debt Securities may be issued as convertible debt securities which may be convertible into shares of common stock of the Corporation, par value \$1.00 per share (the "Common Stock"), or other securities. The Debt Securities, the Preferred Stock, the Depository Shares and

the Warrants are collectively referred to herein as the "Securities."

When a particular series of Securities is offered, a supplement to this Prospectus (each a "Prospectus Supplement") will be delivered with the Prospectus. For Debt Securities, the Prospectus Supplement will set forth with respect to such series (the "Offered Debt Securities"): the designation (including whether senior or subordinated and whether convertible); aggregate principal amount; authorized denominations; maturity; rate or rates (or method of determining the same) and the time or times of payment of any interest; purchase price; any optional or mandatory redemption provisions; any sinking fund provisions; any terms regarding payment in or on the basis of currencies other than U.S. dollars (including composite currencies); provisions relating to any conversion or exchange feature of the Offered Debt Securities; and any other specific terms of the Offered Debt Securities. For Preferred Stock and Depositary Shares, the Prospectus Supplement will set forth with respect to such series (the "Offered Preferred Stock" or the "Offered Depositary Shares"): the designation, rights, preferences and limitations, including rate or rates (or method of determining the same) and the time or times of payment of dividends; voting rights, if any; liquidation preference; any conversion, exchange, redemption or sinking fund provisions; and any other specific terms of the Offered Preferred Stock or the Offered Depositary Shares. In addition, with respect to the Offered Depositary Shares, the Prospectus Supplement will set forth the fraction of a share of Preferred Stock represented by each of the Offered Depositary Shares. For Warrants, the Prospectus Supplement will set forth with respect to such series (the "Offered Warrants"): the description of the securities for which the Offered Warrants will be exercisable and the offering price, exercise price, duration, detachability, call provisions and any other specific terms of the Offered Warrants.

The Securities may be sold directly by the Corporation, through agents designated from time to time or to or through underwriters or dealers. See "Plan of Distribution." If any such agents or underwriters are involved in the sale of any Securities, the names of such agents or underwriters and any applicable commissions or discounts will be set forth in the applicable Prospectus Supplement.

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THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.  
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This Prospectus may not be used to consummate sales of Securities unless accompanied by the applicable Prospectus Supplement.

The date of this Prospectus is \_\_\_\_\_, 1994.

3

#### AVAILABLE INFORMATION

The Corporation is subject to the informational requirements of the Securities Exchange Act of 1934 (the "Exchange Act") and, in accordance therewith, files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy statements and other information can be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Commission's Regional Offices at Seven World Trade Center, 13th Floor, New York, New York 10048 and Northwest Atrium Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661-2511. Copies of such material can also be obtained upon written request from the Public Reference Section of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, at prescribed rates. In addition, certain of the Corporation's securities are listed on the New York Stock Exchange, the Pacific Stock Exchange, the Chicago Stock Exchange and the Montreal Exchange, and the aforementioned materials may also be inspected at the offices of such exchanges at 20 Broad Street, New York, New York; 301 Pine Street, San Francisco, California; 440 South LaSalle Street, Chicago, Illinois; and La Tour de la Bourse, P.O. Box 61, 800 Victoria Square, Montreal, Quebec H4Z1A9 Canada, respectively.

The Corporation has filed with the Commission a registration statement on Form S-3 under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the Securities offered hereby (the "Registration Statement"). This Prospectus does not contain all of the information set forth in the

Registration Statement, certain parts of which are omitted in accordance with the rules and regulations of the Commission. For further information pertaining to the Securities and the Corporation, reference is made to the Registration Statement.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The Corporation's Annual Report on Form 10-K for the fiscal year ended July 3, 1993 and the Corporation's Quarterly Report on Form 10-Q for the quarter ended October 2, 1993 filed with the Commission (File No. 1-5296) pursuant to the Exchange Act and the documents incorporated by reference therein are incorporated herein by reference.

All documents filed by the Corporation pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Prospectus and prior to the termination of the offering of the Securities shall be deemed to be incorporated by reference in this Prospectus and to be a part hereof from the date of filing of such documents.

Any statement contained herein or in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded for purposes of this Prospectus to the extent that a statement contained herein or in any subsequently filed document that is incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Prospectus.

The Corporation will provide, without charge, to each person to whom a copy of this Prospectus is delivered, on the written or oral request of such person, a copy of any or all of the documents incorporated herein by reference (other than exhibits thereto, unless such exhibits are specifically incorporated by reference into such documents). Written requests for such copies should be directed to Inquiry Section, Digital Equipment Corporation, 44 Whitney Street (NR02/H3), Northborough, MA 01532-2599. Telephone requests should be directed to Investor Relations Department, Digital Equipment Corporation, 146 Main Street (ML03-2/T98), Maynard, Massachusetts 01754, telephone (508) 493-7182.

2

4

THE COMPANY

The Corporation is one of the world's largest suppliers of networked computer systems, software and services and a leader in interactive, distributed computing and multivendor systems integration in open computing environments. The Corporation offers a full range of desktop, client-server and production systems and related peripheral equipment, software and services used in a wide variety of applications and industries. The Corporation conducts operations in approximately 100 countries and derives more than 60% of its revenues from outside of the United States.

The Corporation's principal executive offices are located at 146 Main Street, Maynard, Massachusetts 01754-2517, and its telephone number is (508) 493-5111.

<TABLE>

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth the ratios of earnings to fixed charges of the Corporation and its consolidated subsidiaries for each of the years in the five year period ended July 3, 1993 and for the six months ended January 1, 1994 and December 26, 1992.

<CAPTION>

	YEAR ENDED					SIX MONTHS ENDED	
	JULY 3, 1993	JUNE 27, 1992	JUNE 29, 1991	JUNE 30, 1990	JULY 1, 1989	JANUARY 1, 1994	DECEMBER 26, 1992
<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
Ratio of earnings to fixed charges (unaudited) (a).....	(b)	(c)	(d)	1.6x (e)	8.5x	(f)	(g)

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(a) For the purpose of calculating the ratio of earnings to fixed charges, "earnings" consist of income before income taxes and "fixed charges." "Fixed charges" include interest on indebtedness and one-third of all rental expense, excluding rent on capitalized leases (being deemed representative of the interest factor in rental expense).

(b) Earnings were inadequate to cover fixed charges by \$229 million.

(c) Earnings were inadequate to cover fixed charges by \$2,078 million and by \$578 million excluding restructuring charges.

(d) Earnings were inadequate to cover fixed charges by \$519 million; the ratio would have been 3.6x excluding restructuring charges.

(e) The ratio would have been 4.3x excluding restructuring charges.

(f) Earnings were inadequate to cover fixed charges by \$169 million.

(g) Earnings were inadequate to cover fixed charges by \$316 million.

</TABLE>

#### USE OF PROCEEDS

Unless otherwise described in the applicable Prospectus Supplement, the Corporation intends to use the net proceeds from the sale of the Securities for working capital and for other general corporate purposes, which may include the financing of capital expenditures and possible acquisitions of, or investments in, businesses and assets.

#### DESCRIPTION OF DEBT SECURITIES

##### GENERAL

The Corporation may offer Debt Securities consisting of Senior Debt Securities and/or Subordinated Debt Securities. Senior Debt Securities may be issued from time to time in series under an indenture, dated as of September 15, 1992, as supplemented from time to time, between the Corporation and Citibank, N.A., as trustee (the "Senior Trustee"), a copy of which is incorporated by reference into the Registration Statement of which this Prospectus is a part (the "Senior Indenture"). Subordinated Debt Securities may be issued from time to time in series under an indenture to be dated as of January 21, 1994, as supplemented from time to time, between the Corporation and Bankers Trust Company, as trustee (the "Subordinated Trustee"), a copy of which has been filed as an exhibit to the Registration Statement of which this Prospectus is a part (the "Subordinated Indenture"). The Senior Indenture and the Subordinated Indenture are sometimes referred to collectively as the "Indentures," and the Senior Trustee and the Subordinated Trustee are sometimes referred to collectively as the "Trustees." The Subordinated Debt Securities may be convertible into shares of Common Stock of the Corporation or exchangeable for other securities as set forth in the applicable Prospectus Supplement. The Indentures do not limit the aggregate principal amount of Debt Securities which may be issued by the Corporation thereunder and provide that the Debt Securities may be issued in one or more series. The statements under this caption are summaries of certain provisions contained in the Indentures, do not purport to be complete and are qualified in their entirety by reference to the Indentures. Capitalized terms used herein and not defined shall have the meanings assigned to them in the applicable Indenture. Section references referred to below, unless otherwise noted, refer to the respective Sections of both Indentures. The following summaries set forth certain general terms and provisions of the Indentures and the Debt Securities. Further terms of the Offered Debt Securities will be set forth in the applicable Prospectus Supplement.

The Debt Securities will be direct, unsecured obligations of the Corporation. The indebtedness represented by the Senior Debt Securities will rank on a parity with all other unsecured and unsubordinated indebtedness of the Corporation. The indebtedness represented by the Subordinated Debt Securities

will be subordinated in right of payment to the prior payment in full of the Senior Indebtedness of the Corporation as described under "Ranking of Debt Securities." The particular terms of the Offered Debt Securities will be described in the applicable Prospectus Supplement, along with any applicable modifications of or additions to the general terms of the Debt Securities as described herein and in the applicable Indenture and any applicable federal income tax considerations. Accordingly, for a description of the terms of the Offered Debt Securities, reference must be made to both the Prospectus Supplement relating thereto and the description of the Debt Securities set forth in this Prospectus.

The applicable Prospectus Supplement will describe the following terms of the Offered Debt Securities: (a) the title of the Offered Debt Securities and whether such Offered Debt Securities are Senior Debt Securities or Subordinated Debt Securities; (b) any limit on the aggregate principal amount of the Offered Debt Securities; (c) the price (expressed as a percentage of the aggregate principal amount thereof) at which the Offered Debt Securities will be issued; (d) the date or dates on which the principal of the Offered Debt Securities will be payable; (e) the rate or rates (which may be fixed or variable) at which the Offered Debt Securities will bear any interest (or the method of determining the same) and the date or dates from which such interest will accrue; (f) the dates on which any interest on the Offered Debt Securities will be payable and the Regular Record Dates for the interest payable on such Interest Payment Dates; (g) any mandatory or optional sinking fund or analogous provisions; (h) the period or periods within which and the price or prices at

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6

which the Offered Debt Securities may, pursuant to any optional or mandatory redemption provisions (including any provisions for redemption or repurchase at the option of the holder), be redeemed and the other terms and conditions of any such optional or mandatory redemption; (i) if the Offered Debt Securities are Original Issue Discount Securities, the amount of principal payable upon acceleration of such Original Issue Discount Securities following an Event of Default; (j) the currency or currencies, which may be a composite currency such as the European Currency Unit, in which payment of the principal of (and premium, if any) and/or interest on the Offered Debt Securities will be payable if other than the currency of the United States; (k) any currency (including composite currencies) other than the stated currency of the Debt Securities in which the principal of (and premium, if any) and/or interest on the Offered Debt Securities may, at the election of the Corporation or the holders, be payable, and the periods within which, and terms and conditions upon which, such election may be made; (l) the manner in which the amount of payments of principal of (and premium, if any) and/or interest on the Offered Debt Securities is to be determined if such determination is to be made with reference to an index; (m) whether the Offered Debt Securities are to be issued in the form of one or more Global Securities, and, if so, the identity of the depository for such series (the "Debt Depository"); (n) if the Offered Debt Securities are to be issued upon the exercise of Warrants, the time, manner and place for such Offered Debt Securities to be authenticated and delivered; (o) any deletions from, modifications of or additions to the Events of Default or covenants of the Corporation with respect to the Offered Debt Securities, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth in the general provisions of the applicable Indenture, and any change in the right of any Trustee or any of the holders to declare the principal amount of any of the Offered Debt Securities due and payable; (p) if the Offered Debt Securities are Subordinated Debt Securities, whether they will be convertible into Common Stock of the Corporation or exchangeable for other securities, and, if so, the terms and conditions upon which the Offered Debt Securities will be so convertible or exchangeable, including the conversion or exchange price and the conversion or exchange period; (q) any other terms of the Offered Debt Securities.

If so provided in the applicable Prospectus Supplement, Debt Securities may be issued as Original Issue Discount Securities to be sold at a substantial discount below their principal amount. In such cases, special Federal income tax and other considerations applicable to such Original Issue Discount Securities will be described in the applicable Prospectus Supplement.

EXCHANGE AND TRANSFER

At the option of the holder, subject to the terms of the applicable Indenture and the limitations applicable to Global Securities, Debt Securities of each series may be exchanged for other Debt Securities of the same series of any authorized denomination and of a like tenor and aggregate principal amount. Subject to the terms of the applicable Indenture and the limitations applicable to Global Securities, Debt Securities issued in fully registered form may be presented for exchange as provided above or for registration of transfer (duly endorsed or with the form of transfer endorsed thereon duly executed) at the office of the applicable Trustee or other security registrar or at the office of any transfer agent designated by the Corporation for such purpose. No service charge will be made for any registration of transfer or exchange of such Debt Securities, but the Corporation may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. Such transfer or exchange will be effected upon the security registrar or such transfer agent, as the case may be, being satisfied with the documents of title and identity of the person making the request.

If the Debt Securities of any series are to be redeemed in part, the Corporation will not be required to (i) issue, register the transfer of, or exchange any Debt Security of that series during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any such Debt Security that may be selected for redemption and ending at the close of business on the day of such mailing, or (ii) register the transfer of or exchange any Debt Security so selected for redemption, in whole or in part, except the unredeemed portion of any such Debt Security being redeemed in part.

5

7

#### GLOBAL SECURITIES

Some or all of the Debt Securities of any series may be represented, in whole or in part, by one or more Global Securities which will have an aggregate principal amount equal to that of the Debt Securities represented thereby. Each Global Security will be registered in the name of a Debt Depository or a nominee thereof identified in the applicable Prospectus Supplement, will be deposited with such Debt Depository or nominee or a custodian therefor and will bear a legend regarding the restrictions on exchange and registration of transfer thereof referred to below and any such other matters as may be provided for pursuant to the applicable Indenture.

Notwithstanding any provision of the applicable Indenture or any security described herein, no Global Security may be exchanged in whole or in part for Debt Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Debt Depository for such Global Security or any nominee of such Debt Depository, unless (i) the Debt Depository has notified the Corporation that it is unwilling or unable to continue as Debt Depository for such Global Security or has ceased to be qualified to act as such as required by the applicable Indenture, (ii) there shall have occurred and be continuing an Event of Default with respect to the Debt Securities represented by such Global Security, or (iii) there shall exist such circumstances, if any, in addition to or in lieu of those described above as may be described in the applicable Prospectus Supplement. All Debt Securities issued in exchange for a Global Security or any portion thereof will be registered in such names as the Debt Depository may direct.

Ownership of beneficial interests in a Global Security will be limited to institutions that have accounts with the Debt Depository or its nominee ("participants") and to the persons that may hold beneficial interests through participants. In connection with the issuance of any Global Security, the Debt Depository will credit, on its book-entry registration and transfer system, the respective principal amounts of Debt Securities represented by the Global Security to the accounts of its participants. Ownership of beneficial interests in a Global Security will be shown only on, and the transfer of those ownership interests will be effected only through, records maintained by the Debt Depository (with respect to participants' interest) or any such participant (with respect to interests of persons held by such participants on their behalf). Payments, transfers, exchanges and other matters relating to beneficial interests in a Global Security may be subject to various policies and procedures adopted by the Debt Depository from time to time.

As long as the Debt Depository, or its nominee, is the registered holder of



a Global Security, the Debt Depositary or such nominee, as the case may be, will be considered the sole owner and holder of such Global Security and the Debt Securities represented thereby for all purposes under the terms of the Debt Securities and the applicable Indenture. Except in the limited circumstances referred to above, owners of beneficial interests in a Global Security will not receive or be entitled to receive physical delivery of certificated Debt Securities in exchange therefor and will not be considered to be the owners or holders of such Global Security or any Debt Securities represented thereby for any purpose under the Debt Securities or the applicable Indenture. All payments of principal of and any premium and interest on a Global Security will be made to the Debt Depositary or its nominee, as the case may be, as the holder thereof. The Corporation expects that the Debt Depositary, upon receipt of any payment of principal, premium or interest, will credit participants' accounts on the payment date with payments in amounts proportionate to their respective beneficial interest in the principal amount of a Global Security for such Debt Securities as shown on the records of the Debt Depositary. The Corporation also expects that payments by participants to owners of beneficial interests in such Global Security held through them will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such participants. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of such securities in definitive form. These laws may impair the ability to transfer beneficial interests in a Global Security. None of the Corporation, any Trustee or any agent of the Corporation or any Trustee will have any responsibility or liability for any aspect of the Debt Depositary's or any participant's records relating to, or for payments made on account of, beneficial interests in a Global Security, or for maintaining, supervising or reviewing any records relating to such beneficial interest.

6

8

Secondary trading in notes and debentures of corporate issuers is generally settled in clearing-house or next-day funds. In contrast, beneficial interests in a Global Security, in some cases, may trade in the Debt Depositary's same-day funds settlement system, in which case, secondary market trading activity in those beneficial interests would be required by the Debt Depositary to settle in immediately available funds. There is no assurance as to the effect, if any, that settlement in immediately available funds would have on trading activity in such beneficial interests. Also, settlement for purchases of beneficial interests in a Global Security upon the original issuance thereof may be required to be made in immediately available funds.

#### PAYMENT AND PAYING AGENTS

Unless otherwise indicated in the applicable Prospectus Supplement, payment of interest on a Debt Security on any interest payment date will be made to the Person in whose name such Debt Security is registered at the close of business on the Regular Record Date for such interest. Unless otherwise indicated in the applicable Prospectus Supplement, principal of and any premium and interest on the Debt Securities of a particular series will be payable at the office of such paying agent or paying agents as the Corporation may designate for such purpose from time to time, except that, at the option of the Corporation, payment of any interest may be made by check mailed to the address of the Person entitled thereto as such address appears in the security register.

All moneys paid by the Corporation to a paying agent for the payment of the principal of or any premium or interest on any Debt Security which remain unclaimed at the end of two years after such principal, premium or interest has become due and payable will be repaid to the Corporation, and the holder of such Debt Security thereafter may look only to the Corporation for payment thereof.

#### EVENTS OF DEFAULT

Unless otherwise set forth in the applicable Prospectus Supplement, the following are Events of Default under the Indentures with respect to Debt Securities of any series: (a) failure to pay any interest on any Debt Security of that series when due, continued for 30 days; (b) failure to pay principal of or any premium on any Debt Security of that series when due; (c) failure to deposit any sinking fund payment when due in respect of any Debt Security of that series; (d) failure to perform any other covenant of the Corporation in the

applicable Indenture (other than a covenant included in such Indenture solely for the benefit of series of Debt Securities other than that series) continued for 90 days after written notice as provided in the applicable Indenture; (e) certain events in bankruptcy or of insolvency or reorganization involving the Corporation; and (f) any other Event of Default provided with respect to Debt Securities of that series in the applicable Prospectus Supplement. (Section 501) If an Event of Default with respect to Debt Securities of any series occurs and is continuing, either the Trustee or the holders of at least 25% in aggregate principal amount of the outstanding Debt Securities of that series may declare the principal amount (or, if the Debt Securities of that series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all of the Debt Securities of that series to be due and payable immediately. At any time after a declaration of acceleration with respect to Debt Securities of any series has been made, but before a judgment or decree based on acceleration has been obtained, the holders of a majority in aggregate principal amount of outstanding Debt Securities of that series may, under certain circumstances, rescind and annul such acceleration. (Section 502)

The Indentures provide that, subject to the duty of the Trustees during default to act with the required standard of care, the Trustees will be under no obligation to exercise any of their respective rights or powers under the Indentures at the request or direction of any of the holders of Debt Securities, unless such holders shall have offered to the Trustees reasonable indemnity. (Section 603) Subject to such provisions for the indemnification of the Trustees, the holders of a majority in aggregate principal amount of the outstanding Debt Securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the applicable Trustee, or exercising any trust or power conferred on such Trustee, with respect to the Debt Securities of that series. (Section 512)

7

9

The Corporation is required to furnish to the Trustees annually a statement as to the performance by the Corporation of certain of its obligations under the Indentures and as to any default in such performance. (Section 1007)

#### COVENANTS OF THE CORPORATION

The applicable Prospectus Supplement will describe any material covenants in respect of a series of Debt Securities. The general provisions of the Indentures do not contain any provisions that would limit the ability of the Corporation to incur indebtedness or that would afford holders of Debt Securities protection in the event of a highly leveraged or similar transaction involving the Corporation.

Unless otherwise indicated in the applicable Prospectus Supplement, Senior Debt Securities will include the following covenants of the Corporation:

##### LIMITATION ON LIENS.

The Corporation will not issue, incur, create, assume or guarantee, and will not permit any Restricted Subsidiary to issue, incur, create, assume or guarantee, any debt for money borrowed secured by a mortgage, security interest, pledge, lien, charge or other encumbrance ("Mortgages") upon any Principal Property of the Corporation or any Restricted Subsidiary or upon any shares of stock or indebtedness of any Restricted Subsidiary (whether such Principal Property, shares or indebtedness are now existing or owed or hereafter created or acquired) without in each such case effectively providing concurrently with the issuance, incurrence, creation, assumption or guaranty of any such secured debt, or the grant of a mortgage with respect to any such indebtedness, that the Senior Debt Securities (together with, if the Corporation shall so determine, any other indebtedness of or guarantee by the Corporation or such Restricted Subsidiary ranking equally with the Senior Debt Securities) shall be secured equally and ratably with such secured debt. The foregoing restriction, however, will not apply to: (a) Mortgages on property, shares of stock or indebtedness or other assets of any corporation existing at the time such corporation becomes a Restricted Subsidiary; (b) Mortgages existing at the time of acquisition of such property by the Corporation or a Restricted Subsidiary or Mortgages to secure the payment of all or any

part of the purchase price of such property upon the acquisition thereof or to secure debt incurred prior to, at the time of, or within 180 days after, the acquisition of such property for the purpose of financing all or part of the purchase price thereof, or Mortgages to secure the cost of improvements to such acquired property or the cost of construction of such property; (c) Mortgages to secure indebtedness of a Restricted Subsidiary owing to the Corporation or another Restricted Subsidiary; (d) Mortgages existing at the date of the Senior Indenture; (e) Mortgages on property of a corporation existing at the time such corporation is merged into or consolidated with the Corporation or a Restricted Subsidiary or at the time of a sale, lease or other disposition of the properties of a corporation as an entirety or substantially as an entirety to the Corporation or a Restricted Subsidiary; (f) certain Mortgages in favor of governmental entities; or (g) extensions, renewals or replacements of any Mortgage referred to in the foregoing clauses (a) through (f); provided, however, that any Mortgages permitted by any of the foregoing clauses (a), (b), (c), (d), (e) and (f) shall not extend to or cover any property of the Corporation or such Restricted Subsidiary, as the case may be, other than the property specified in such clauses and improvements thereto. (Section 1010)

Notwithstanding the restrictions outlined in the preceding paragraph, the Corporation or any Restricted Subsidiary will be permitted to issue, incur, create, assume or guarantee debt secured by a Mortgage which would otherwise be subject to such restrictions, without equally and ratably securing the Senior Debt Securities, provided that after giving effect thereto, the aggregate amount of all debt so secured by Mortgages (not including Mortgages permitted under clauses (a) through (g) above) does not exceed 10% of the Consolidated Net Tangible Assets of the Corporation. (Section 1010)

#### LIMITATION ON SALE AND LEASE-BACK.

The Corporation will not, nor will it permit any Restricted Subsidiary to, enter into any sale and lease-back transaction with respect to any Principal Property, other than any such transaction involving a

8

10

lease for a term of not more than three years or any such transaction between the Corporation and a Restricted Subsidiary or between Restricted Subsidiaries, unless: (a) the Corporation or such Restricted Subsidiary would be entitled to incur indebtedness secured by a Mortgage on the Principal Property involved in such transaction at least equal in amount to the Attributable Debt with respect to such sale and lease-back transaction, without equally and ratably securing the Senior Debt Securities, pursuant to the limitation in the Senior Indenture on liens; or (b) the Corporation shall apply an amount equal to the greater of the net proceeds of such sale or the Attributable Debt with respect to such sale and lease-back transaction within 120 days to the retirement (other than any mandatory retirement or by payment at maturity) of debt for money borrowed of the Corporation or a Restricted Subsidiary that matures more than twelve months after the creation of such indebtedness. (Section 1011)

#### DEFEASANCE AND DISCHARGE OF DEBT SECURITIES

Unless otherwise indicated in the applicable Prospectus Supplement, the following provisions will apply to Debt Securities under the Indentures: the Corporation, at its option (a) will be discharged from any and all obligations in respect to any series of Debt Securities (except for certain obligations to register the transfer or exchange of such Debt Securities, to replace stolen, lost or mutilated Debt Securities, to maintain paying agencies and to hold monies for payment in trust and, with respect to Subordinated Debt Securities which are convertible or exchangeable, the right to convert or exchange); or (b) need not comply with certain restrictive covenants of the Indentures in respect of such series of Debt Securities, in either case upon the deposit with the Trustee (and in the case of a discharge, 91 days after such deposit), in trust, of money and/or U.S. Government Obligations (as defined in the Indentures) which through the payment of interest and principal in respect thereof in accordance with their terms, without regard to any reinvestment thereof, will provide money in an amount sufficient to pay the principal of and each installment of interest

on such Debt Securities on the Stated Maturity of such payments in accordance with the terms of the applicable Indenture and such Debt Securities. In the case of discharge under clause (a), such a trust may be established only if, among other things, the Corporation has received from, or there has been published by, the Internal Revenue Service a ruling, or there has otherwise been a change in law, to the effect that holders of such Debt Securities will not recognize income, gain or loss for federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred. (Section 403) In the event of any such discharge under clause (a), the holders of such Debt Securities would thereafter be able to look only to such trust fund for payment of principal (and premium, if any) and interest.

#### CONSOLIDATION, MERGER AND SALE OF ASSETS

The Indentures provide that the Corporation, without the consent of the holders of any of the outstanding Debt Securities, may consolidate or merge with or into, or transfer or lease its assets as an entirety or substantially as an entirety to, any corporation or may acquire or lease the assets of any person, provided that: (a) the corporation formed by such consolidation or into which the Corporation is merged or which acquires or leases the assets of the Corporation as an entirety or substantially as an entirety is organized under the laws of any domestic jurisdiction and assumes the Corporation's obligations on the Debt Securities and under the Indentures and, with respect to Subordinated Debt Securities which are convertible or exchangeable, provides for conversion or exchange rights in accordance with the Subordinated Indenture; (b) immediately after giving effect to the 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 occurred and be continuing; and (c) certain other conditions are met. Upon compliance with these provisions by a successor corporation, the Corporation would be relieved of its obligations under the Indentures and the Debt Securities. (Sections 801 and 802)

The Senior Indenture also provides that, if upon any such consolidation, merger, sale, conveyance or lease, any Principal Property would become subject to any Mortgage, the Corporation or such successor corporation will be obligated under such Senior Indenture to cause the Senior Debt Securities to be secured equally and ratably with (or, at the Corporation's or such successor corporation's option, prior to) any indebtedness secured by such Mortgage.

9

11

#### MODIFICATION AND WAIVER

Modifications and amendments of the Indentures may be made by the Corporation and the applicable Trustee with the consent of the holders of a majority in aggregate principal amount of the outstanding Debt Securities of each series affected by such modification or amendment; provided, however, that no such modification or amendment may, without the consent of the holder of each outstanding Debt Security affected thereby: (a) change the stated maturity date of the principal of, any installment of principal or interest on, or sinking fund payments in respect of, such Debt Security; (b) alter the redemption or conversion provisions of such Debt Security in a manner materially adverse to the holder thereof; (c) reduce the principal amount of, or any premium or interest on, such Debt Security; (d) reduce the amount of principal of an Original Issue Discount Security payable upon acceleration of the maturity thereof; (e) change the place or currency of payment of principal of, or any premium or interest on, such Debt Security; (f) impair the right to institute suit for the enforcement of any payment on or with respect to such Debt Security; (g) with respect to Subordinated Debt Securities which are convertible or exchangeable, adversely affect the right to convert or exchange any such Subordinated Debt Security; (h) with respect to Subordinated Debt Securities, modify the provisions of the Subordinated Indenture with respect to subordination in a manner materially adverse to the Subordinated Debt Securities; or (i) reduce the percentage in principal amount of outstanding Debt Securities of any series the consent of the holders of which is required for modification or amendment of the applicable Indenture or for waiver of compliance with certain provisions of such Indenture or for waiver of certain defaults. (Section 902)

The holders of a majority in aggregate principal amount of the outstanding Debt Securities of each series may, on behalf of all holders of Debt Securities of that series, waive, insofar as that series is concerned: (a) compliance by the Corporation with certain restrictive provisions of the applicable Indenture; or (b) any past default under the applicable Indenture, except a default in the payment of principal or any premium or interest and, with respect to any Subordinated Debt Securities which are convertible or exchangeable, a default in respect of the right to convert or exchange. (Sections 1008 and 513)

Modifications and amendments may be made by the Corporation and the Trustee to the Indentures, without the consent of any holder of any Debt Security of any series, to add covenants and Events of Default, and to make provisions with respect to other matters and issues arising under the Indentures, provided that any such provision does not adversely affect the rights of the holders of Debt Securities of any series. (Section 901)

#### RANKING OF DEBT SECURITIES

The Senior Debt Securities will be unsecured and unsubordinated obligations of the Corporation and will rank on a parity with all other unsecured and unsubordinated indebtedness of the Corporation.

Unless otherwise provided in the applicable Prospectus Supplement, Subordinated Debt Securities will be subject to the following subordination provisions.

The payment of the principal of, interest on, or any other amounts due on, the Subordinated Debt Securities will be subordinated in right of payment to the prior payment in full of all Senior Indebtedness (as defined below) of the Corporation. (Section 1601) No payment on account of the principal of, redemption of, interest on or any other amounts due on the Subordinated Debt Securities and no redemption, purchase or other acquisition of the Subordinated Debt Securities may be made, unless (i) full payment of amounts then due for principal, sinking funds, interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Corporation, whether or not a claim for such post-petition interest is allowed in such proceeding), penalties, reimbursement or indemnification amounts, fees and expenses, and of all other amounts then due on all Senior Indebtedness shall have been made or duly provided for pursuant to the terms of the instrument governing such Senior Indebtedness, and (ii) at the time of, or immediately after giving effect to, any such payment, redemption, purchase or other acquisition, there shall not exist under any Senior Indebtedness or any agreement pursuant to which any Senior Indebtedness has been issued, any default which shall not have been cured or waived and which shall have resulted in the full amount of such Senior Indebtedness being declared due and payable. In addition, the Subordinated Indenture

10

12

provides that, if holders of any Senior Indebtedness notify the Corporation and the Subordinated Trustee that a default has occurred giving the holders of such Senior Indebtedness the right to accelerate the maturity thereof, no payment on account of principal, sinking fund or other redemption, interest or any other amounts due on the Subordinated Debt Securities and no purchase, redemption or other acquisition of the Subordinated Debt Securities will be made for the period (the "Payment Blockage Period") commencing on the date such notice is received and ending on the earlier of (A) the date on which such event of default shall have been cured or waived or (B) 180 days from the date such notice is received. (Section 1603) Notwithstanding the foregoing, only one payment blockage notice with respect to the same event of default or any other events of default existing and known to the person giving such notice at the time of such notice on the same issue of Senior Indebtedness may be given during any period of 360 consecutive days. (Section 1603) No new Payment Blockage Period may be commenced by the holders of Senior Indebtedness during any period of 360 consecutive days unless all events of default which triggered the preceding Payment Blockage Period have been cured or waived. (Section 1603) Upon any distribution of its assets in connection with any dissolution, winding-up, liquidation or reorganization of the Corporation, all Senior Indebtedness must be paid in full before the holders of the Subordinated Debt Securities are entitled to any payments whatsoever. (Section 1602)

The Subordinated Indenture does not restrict the amount of Senior Indebtedness or other indebtedness of the Corporation or any subsidiary of the Corporation. As a result of these subordination provisions, in the event of the Corporation's insolvency, holders of the Subordinated Debt Securities may recover ratably less than general creditors of the Corporation.

#### CONVERTIBLE OR EXCHANGEABLE SUBORDINATED DEBT SECURITIES

The terms and conditions, if any, on which any series of Subordinated Debt Securities are convertible into Common Stock of the Corporation or exchangeable for other securities will be set forth in the applicable Prospectus Supplement. Such terms will include the conversion price or exchange rate, the conversion or exchange period and the manner in which the right to convert or exchange may be exercised, the events requiring an adjustment of the conversion or exchange price and provisions affecting conversion or exchange in the event of the redemption of the convertible or exchangeable Subordinated Debt Securities. (Sections 1701, 1702 and 1704) With respect to Subordinated Debt Securities which are exchangeable for marketable securities issued by persons other than the Corporation, the applicable Prospectus Supplement shall also set forth any arrangements for the deposit of the securities deliverable in exchange for Subordinated Debt Securities in escrow with an independent financial institution, provisions with respect to the receipt of cash dividends or other income on such securities and the exercise of voting and other rights with respect to the ownership of such securities and any tax and other special considerations applicable to the exercise of the right to exchange, if any. (Sections 1701, 1702 and 1708)

#### CERTAIN DEFINITIONS

"Attributable Debt" when used in connection with a sale and lease-back transaction involving a Principal Property means, at the time of determination, the lesser of: (a) the fair value of such property (as determined in good faith by the Board of Directors of the Corporation); or (b) the present value of the total net amount of rent required to be paid under such lease during the remaining term thereof (including any renewal term or period for which such lease has been extended), discounted at the rate of interest set forth or implicit in the terms of such lease. For purposes of the foregoing definition, rent shall not include amounts required to be paid by the lessee, whether or not designated as rent or additional rent, on account of or contingent upon maintenance and repair, insurance, taxes, assessments, water rates and similar charges.

"Consolidated Net Tangible Assets" means, as of any particular time, the aggregate amount of assets (less applicable reserves and other properly deductible items) after deducting therefrom: (a) all current liabilities except for: (1) notes and loans payable, (2) current maturities of long-term debt, and (3) current maturities of obligations under capital leases; and (b) certain intangible assets, to the extent included in said aggregate amount of assets, all as set forth on the most recent consolidated balance sheet of the Corporation and its consolidated subsidiaries and computed in accordance with generally accepted accounting principles.

11

13

"Indebtedness" means, with respect to any person, (i) any obligation of such person to pay the principal of, premium, if any, interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to such person, whether or not a claim for such post-petition interest is allowed in such proceeding), penalties, reimbursement or indemnification amounts, fees, expenses or other amounts relating to any indebtedness of such person (A) for borrowed money (whether or not the recourse of the lender is to the whole of the assets, of such person or only to a portion thereof), (B) evidenced by notes, debentures or similar instruments (including purchase money obligations) given in connection with the acquisition of any property or assets (other than inventory or similar property acquired in the ordinary course of business), including securities, for the payment of which such person is liable, directly or indirectly, or the payment of which is secured by a lien, charge or encumbrance on property or assets of such person, (C) for goods, materials or services purchased in the ordinary course of business (other than trade accounts payable arising in the ordinary courses of business), (D) with respect to letters of credit or bankers acceptances issued



for the account of such person or performance bonds, (E) for the payment of money relating to a Capitalized Lease Obligation (as defined in the Indenture), or (F) under interest rate swaps, caps or similar agreements and foreign exchange contracts, currency swaps or similar agreements; (ii) any liability of others of the kind described in the preceding clause (i) which such person has guaranteed or which is otherwise its legal liability; and (iii) any and all deferrals, renewals, extensions and refunding of, or amendments, modifications or supplements to, any liability of the kind described in any of the preceding clauses (i) or (ii).

"Principal Property" means the principal corporate office and any manufacturing plant or manufacturing facility (whether now owned or hereafter acquired) which: (a) is owned by the Corporation or any Restricted Subsidiary; (b) is located within the United States of America; and (c) has not been determined in good faith by the Board of Directors of the Corporation not to be materially important to the total business conducted by the Corporation and its subsidiaries taken as a whole.

"Restricted Subsidiary" means any Subsidiary which owns any Principal Property; provided, however, that the term "Restricted Subsidiary" does not include any Subsidiary which is principally engaged in leasing or in financing receivables, or which is principally engaged in financing the Corporation's operations outside the United States of America.

"Senior Indebtedness" means Indebtedness of the Corporation, whether outstanding on the date of the Subordinated Indenture or thereafter created, incurred, assumed or guaranteed by the Corporation, other than the following: (1) any Indebtedness as to which, in the instrument evidencing such Indebtedness or pursuant to which such Indebtedness was issued, it is expressly provided that such Indebtedness is subordinate in right of payment to all indebtedness of the Corporation not expressly subordinated to such Indebtedness; (2) any Indebtedness which by its terms refers explicitly to the Subordinated Debt Securities and states that such Indebtedness shall not be senior, shall be *pari passu* or shall be subordinated in right of payment to the Subordinated Debt Securities; and (3) with respect to any series of Subordinated Debt Securities, any Indebtedness of the Corporation evidenced by Subordinated Debt Securities of the same or of another series. Notwithstanding anything to the contrary in the foregoing, Senior Indebtedness shall not include: (a) Indebtedness of or amounts owed by the Corporation for compensation to employees, or for goods or materials purchased in the ordinary course of business, or for services, or (b) Indebtedness of the Corporation to a subsidiary of the Corporation.

"Subsidiary" means any corporation of which at least a majority of the outstanding stock having the voting power to elect a majority of the board of directors of such corporation is at the time owned, directly or indirectly, by the Corporation or by one or more Subsidiaries, or by the Corporation and one or more Subsidiaries.

#### CONCERNING THE TRUSTEES

Citibank, N.A. is the Senior Trustee under the Senior Indenture. Bankers Trust Company is the Subordinated Trustee under the Subordinated Indenture. Each of the Trustees has dealings with the Corporation in the ordinary course of business and from time to time may also make loans to the Corporation and its Subsidiaries. In addition, Citibank, N.A. has also been appointed as the Preferred Stock Depositary. A Trustee may resign or be removed with respect to one or more series of Debt Securities and a successor Trustee appointed with respect to such series. (Section 610)

12

14

#### DESCRIPTION OF CAPITAL STOCK

##### GENERAL

The Corporation is authorized to issue up to 450,000,000 shares of Common Stock and up to 25,000,000 shares of Preferred Stock which may be issued by the Board of Directors of the Corporation from time to time. The particular terms of any series of Preferred Stock offered hereunder will be described in the applicable Prospectus Supplement. If so indicated in a Prospectus Supplement, the terms of any such series may differ from the terms set forth below.

The following summary descriptions of capital stock and Rights (as defined below) do not purport to be complete and are subject to, and qualified in their entirety by reference to, the more complete descriptions thereof set forth in the Corporation's Restated Articles of Organization, as amended (the "Restated Articles"), the Certificate of Designation relating to each series of Preferred Stock (the "Certificate of Designation"), the Corporation's By-laws, as amended, and the Rights Plan (as defined below). The applicable Certificate of Designation will be filed as an exhibit to or incorporated by reference in the Registration Statement of which this Prospectus is a part at or prior to the time of issuance of the Offered Preferred Stock.

#### DESCRIPTION OF COMMON STOCK

The Corporation's Restated Articles authorize the issuance of up to 450,000,000 shares of Common Stock. Each share of the Common Stock is entitled to one vote at all meetings of stockholders for the election of directors and on all other matters. Dividends may be paid to the holders of the Common Stock when and if declared by the Board of Directors out of funds legally available therefor. The Common Stock has no pre-emptive or similar rights. The holders are not liable to further call or assessment. Upon liquidation, dissolution or winding up of the affairs of the Corporation, its assets remaining after provision for payment of creditors would be distributed pro rata among holders of the Common Stock, subject to the preferential rights of any then outstanding Preferred Stock.

The Common Stock is listed on the New York Stock Exchange, the Chicago Stock Exchange, the German Stock Exchanges of Frankfurt, Munich and Berlin, the Montreal Exchange, the Pacific Stock Exchange and the Swiss Exchanges of Zurich, Geneva and Basel, and is admitted to unlisted trading privileges on the Boston Stock Exchange, Cincinnati Stock Exchange, Luxembourg Stock Exchange and Philadelphia Stock Exchange.

First Chicago Trust Company of New York is the transfer agent for the Common Stock. The Corporation also serves as a co-transfer agent in connection with the Corporation's various employee stock programs.

#### DESCRIPTION OF PREFERRED STOCK

The following sets forth certain general terms and provisions of the Preferred Stock which would be offered hereby. Further terms of the Offered Preferred Stock will be set forth in the applicable Prospectus Supplement.

The Corporation's Restated Articles authorize the issuance of up to 25,000,000 shares of Preferred Stock. As of the date of this Prospectus, no shares of Preferred Stock are currently outstanding, and no shares are reserved for issuance. Subject to limitations prescribed by law, the Board of Directors is authorized at any time to issue one or more series of Preferred Stock; to determine all designations, preferences and limitations for any such series; and to determine the number of shares in any such series.

The Board of Directors is authorized to determine for each series of Preferred Stock, and the Prospectus Supplement will set forth with respect to such series, the following designations, preferences and limitations, if any: the dividend rights, the redemption provisions, the rights upon liquidation, dissolution or winding up of the Corporation, the conversion or exchange rights, the sinking fund provisions, the voting rights, provided that the holders of shares of Preferred Stock will not be entitled to more than one vote per share when voting as a class with the holders of shares of Common Stock; and the other preferences, powers, qualifications, special or

13

15

relative rights and privileges and limitations or restrictions of such preferences or rights, if any. No holders of shares of the capital stock of the Corporation have any pre-emptive rights to acquire any securities of the Corporation.

#### DIVIDENDS

Holders of shares of Preferred Stock shall be entitled to receive, when, as



and if declared by the Board of Directors out of funds of the Corporation legally available for payment, dividends payable at such dates and at such rates per share as set forth in the applicable Prospectus Supplement. The Prospectus Supplement will also state applicable record dates regarding the payment of dividends.

#### CONVERTIBILITY

No series of Preferred Stock will be convertible into, or exchangeable for, other securities or property except as set forth in the related Prospectus Supplement.

#### REDEMPTION AND SINKING FUND

No series of Preferred Stock will be redeemable or receive the benefit of a sinking fund except as set forth in the related Prospectus Supplement.

#### LIQUIDATION

Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, holders of any series of Preferred Stock will be entitled to receive the liquidation preference per share specified in the Prospectus Supplement, if any, in each case together with any applicable accrued and unpaid dividends and before any distribution to holders of the Common Stock or any class of stock ranking junior to the Preferred Stock as to dividends and liquidation preferences. In the event there are insufficient assets to pay such liquidation preferences for all classes of Preferred Stock in full, the remaining assets shall be allocated ratably among all series of Preferred Stock based upon the aggregate liquidation preference for all outstanding shares for such series. After payment of the full amount of the liquidation preference to which they are entitled, the holders of shares of Preferred Stock will not be entitled to any further participation in any distribution of assets by the Corporation unless otherwise provided in a Prospectus Supplement, and, in such case, the remaining assets of the Corporation shall be distributable exclusively among the holders of the Common Stock and any class of stock ranking junior to the Preferred Stock as to dividends and liquidation preferences, according to their respective interests.

#### VOTING

No series of Preferred Stock will be entitled to vote except as provided below or in the related Prospectus Supplement. The holders of shares of Preferred Stock will not be entitled to more than one vote per share when voting as a class with the holders of shares of Common Stock. Unless otherwise specified in a Prospectus Supplement, the affirmative vote of the holders of two-thirds of the outstanding shares of a series of Preferred Stock voting separately is required to authorize any amendment, alteration or repeal of the Restated Articles or of the Certificate of Designation which would adversely affect the rights of any such class or series of Preferred Stock.

#### MISCELLANEOUS

Preferred Stock, upon issuance against full payment of the purchase price therefor, will be fully paid and nonassessable. Neither the par value nor the liquidation preference is indicative of the price at which the Preferred Stock will actually trade on or after the date of issuance. Payment of dividends on any series of Preferred Stock may be restricted by loan agreements, indentures and other transactions entered into by the Corporation. The transfer agent for each series of Preferred Stock will be specified in the related Prospectus Supplement.

#### DESCRIPTION OF RIGHTS

On December 11, 1989, the Board of Directors unanimously adopted a Stockholder Rights Plan (the "Rights Plan"). Under the Rights Plan, the Corporation distributed to its stockholders a dividend of one Common Stock Purchase Right (a "Right" and collectively, the "Rights") for each outstanding share of the Corporation's Common Stock. Initially, each Right will entitle holders of Common Stock to buy one share of Common Stock of the Corporation at

an exercise price of \$400, subject to adjustment. The Rights will become exercisable only if a person or group acquires 20% or more of the Common Stock, or announces a tender or exchange offer which would result in its ownership of 30% or more of the Common Stock, or a person owning 10% or more of the Common Stock is determined by the Board of Directors to be an "Adverse Person," as defined in the Rights Plan.

If any person or group becomes the beneficial owner of 25% or more of the Common Stock except pursuant to a tender offer for all shares which the directors determine to be at a fair price and in the best interests of the Corporation; a 20% or more stockholder engages in a merger with the Corporation in which the Corporation survives and its Common Stock remains outstanding and unchanged; certain other events involving the Corporation and a 20% or more stockholder occur; or, under certain circumstances, the Board of Directors determines a 10% or more stockholder to be an Adverse Person, each Right not then held by such person or related parties will entitle its holder to purchase, at the Right's then current exercise price, Common Stock of the Corporation (or, in certain circumstances as determined by the Board of Directors, a combination of cash, property, Common Stock or other securities) having a value of twice the Right's exercise price. In addition, at any time after a stockholder acquires a 20% or more equity interest in the Corporation, if the Corporation is involved in a merger or other business combination transaction with another person in which its Common Stock is changed or converted, or sells or transfers more than 50% of its assets or earning power to another person, each Right that has not previously been exercised or voided will entitle its holder to purchase, at the Right's then current exercise price, shares of common stock of such other person having a value of twice the Right's exercise price. The Corporation generally is entitled to redeem the Rights at \$.01 per Right at any time until the Board of Directors determines a 10% or more stockholder to be an Adverse Person or the tenth day following public announcement that a 20% equity interest in the Corporation has been acquired. The Rights Plan will expire on December 21, 1999 unless the Rights are earlier redeemed by the Corporation.

The adoption of the Rights Plan has the effect of making an unsolicited takeover of the Corporation more difficult and more costly to any potential acquiror in circumstances in which the Board of Directors determines that such an unsolicited takeover is not in the best interests of the Corporation's stockholders.

#### CERTAIN RESTATED ARTICLES AND BY-LAWS PROVISIONS; MASSACHUSETTS LAW

Massachusetts General Laws Chapter 156B, Section 50A requires that publicly-held Massachusetts corporations have a classified board of directors consisting of three classes as nearly equal in size as possible, unless the corporation elects not to be covered by Section 50A. Consequently, the Board of Directors of the Corporation is divided into three classes, with each class serving three years and with the terms of office of the respective classes expiring in successive years. The Corporation's By-laws contain provisions which give effect to Section 50A.

The Corporation's By-laws also provide that special meetings of stockholders may be called upon written application of one or more stockholders who hold at least 90% of the capital stock entitled to vote at the meeting. The effect of this provision is to make it more difficult for the stockholders to call a special meeting of stockholders. In addition, the Corporation's By-laws require advance notice (i) for any business to be properly brought before a stockholders' meeting by a stockholder and (ii) of nominations of persons for election to the Board of Directors at the annual meeting.

The Corporation is subject to the provisions of Chapter 110F of the Massachusetts General Laws, the so-called Business Combination Statute. Under Chapter 110F, a Massachusetts corporation with over 200 stockholders, such as the Corporation, may not engage in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person becomes an interested stockholder, unless (i) the interested stockholder obtains the approval of the Board of Directors

prior to becoming an interested stockholder, (ii) the interested stockholder acquires 90% of the outstanding voting stock of the corporation (excluding

shares held by certain affiliates of the corporation) at the time it becomes an interested stockholder, or (iii) the business combination is approved by both the Board of Directors and the holders of two-thirds of the outstanding voting stock of the corporation (excluding shares held by the interested stockholder). An "interested stockholder" is a person who, together with affiliates and associates, owns (or at any time within the prior three years did own) 5% or more of the outstanding voting stock of the corporation. A "business combination" includes a merger, a stock or assets sale, and other transactions resulting in a financial benefit to the stockholders.

By vote of the Board of Directors, the Corporation has elected to be exempt from the applicability of Massachusetts General Laws, Chapter 110D, entitled "Regulation of Control Share Acquisitions." In general, this statute provides that any stockholder of a corporation subject to this statute who acquires 20% or more of the outstanding voting stock of a corporation (except in certain transactions) may not vote such stock unless the stockholders of the corporation so authorize. The Board of Directors may amend the Corporation's By-laws at any time to subject the Corporation to this statute prospectively.

#### DESCRIPTION OF DEPOSITARY SHARES

##### GENERAL

The Corporation may, at its option, elect to offer Depositary Shares rather than full shares of Preferred Stock. In the event such option is exercised, each of the Depositary Shares will represent ownership of and entitlement to all rights and preferences of a fraction of a share of Preferred Stock of a specified series (including dividend, voting, redemption and liquidation rights). The applicable fraction will be specified in the applicable Prospectus Supplement. The shares of Preferred Stock represented by the Depositary Shares will be deposited with a depository (the "Preferred Stock Depository") named in the applicable Prospectus Supplement, under a deposit agreement (the "Deposit Agreement") among the Corporation, Citibank, N.A. or another financial institution, as Depository, and the holders of certificates evidencing Depositary Shares ("Depositary Receipts"). Depositary Receipts will be delivered to those persons purchasing Depositary Shares in the offering. The Preferred Stock Depository will be the transfer agent, registrar and dividend disbursing agent for the Depositary Shares. Holders of Depositary Receipts agree to be bound by the Deposit Agreement, which requires holders to take certain actions such as filing proof of residence and paying certain charges.

The description set forth herein and in any Prospectus Supplement of certain provisions of the Deposit Agreement and of the Depositary Shares and Depositary Receipts does not purport to be complete and is subject to and qualified in its entirety by reference to the forms of Deposit Agreement and Depositary Receipts and the Certificate of Designation relating to each series of Preferred Stock which have been or will be filed as exhibits to or incorporated by reference into the Registration Statement of which this Prospectus is a part, at or prior to the issuance of Depositary Shares.

Upon surrender of Depositary Receipts at the office of the Preferred Stock Depository and upon payment of the charges provided in the Deposit Agreement and subject to the terms thereof, a holder of Depositary Shares is entitled to have the Preferred Stock Depository deliver to such holder the whole shares of Preferred Stock underlying the Depositary Shares evidenced by the surrendered Depositary Receipts. Partial shares of Preferred Stock will not be issued. If the Depositary Receipts delivered by the holder evidence a number of Depositary Shares in excess of the number of Depositary Shares representing the number of whole shares of Preferred Stock to be withdrawn, the Preferred Stock Depository will deliver to such holder at the same time a new Depositary Receipt evidencing such excess number of Depositary Shares. Holders of Preferred Stock thus withdrawn will not thereafter be entitled to deposit such shares under the Deposit Agreement or to receive Depositary Receipts evidencing Depositary Shares therefor.

##### DIVIDENDS AND OTHER DISTRIBUTIONS

The Preferred Stock Depository will distribute all cash dividends or other cash distributions received in respect of the series of Preferred Stock represented by the Depositary Shares to the record holders of

Depository Receipts relating to such Preferred Stock in proportion to the respective number of Depository Shares owned by such holders on the relevant record date, which will be the same record date as the record date fixed by the Corporation for the applicable series of Preferred Stock. The Preferred Stock Depository shall distribute only such amount, however, as can be distributed without attributing to any holder of Depository Shares a fraction of one cent, and any balance not so distributed shall be added to and treated as part of the next sum received by the Preferred Stock Depository for distribution to record holders of Depository Shares.

In the event of a distribution other than in cash, the Preferred Stock Depository will distribute property received by it to the record holders of Depository Receipts entitled thereto, in proportion, as nearly as practicable, to the respective number of Depository Shares owned by such holders on the relevant record date. If the Preferred Stock Depository, after consultation with the Corporation, determines that it is not feasible to make such distribution, the Preferred Stock Depository may, with the approval of the Corporation, adopt any other method for such distribution as it deems appropriate, including the sale of such property and distribution of the net proceeds from such sale to such holders.

#### LIQUIDATION PREFERENCE

In the event of the liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the holders of each Depository Share will be entitled to the fraction of the liquidation preference accorded each share of the applicable series of Preferred Stock, as set forth in the related Prospectus Supplement.

#### REDEMPTION OF DEPOSITARY SHARES

If a series of Preferred Stock represented by the applicable series of Depository Shares is subject to redemption, such Depository Shares will be redeemed from the proceeds received by the Preferred Stock Depository resulting from the redemption, in whole or in part, of such series of Preferred Stock held by the Preferred Stock Depository. The redemption price per Depository Share will be equal to the applicable fraction of the redemption price per share payable with respect to such series of Preferred Stock. Whenever the Corporation redeems shares of Preferred Stock held by the Preferred Stock Depository, the Preferred Stock Depository will redeem as of the same redemption date the number of Depository Shares representing the shares of Preferred Stock so redeemed. The Preferred Stock Depository will mail the notice of redemption promptly upon receipt of such notice from the Corporation and not less than 35 nor more than 60 days prior to the date fixed for redemption of the Preferred Stock and the Depository Shares to the record holders of the Depository Receipts. If less than all of the Depository Shares are to be redeemed, the Depository Shares to be redeemed will be selected by lot or pro rata as may be determined by the Preferred Stock Depository.

After the date fixed for redemption, the Depository Shares so called for redemption will no longer be deemed to be outstanding and all rights of the holders of such Depository Shares will cease, except the right to receive the moneys payable upon such redemption and any money or other property to which the holders of such Depository Shares were entitled upon such redemption upon surrender to the Preferred Stock Depository of the Depository Receipts evidencing such Depository Shares.

#### VOTING

Promptly upon receipt of notice of any meeting at which the holders of the series of Preferred Stock represented by an applicable series of Depository Shares are entitled to vote, the Preferred Stock Depository will mail the information contained in such notice of meeting to the record holders of the Depository Receipts relating to such Preferred Stock. Each record holder of such Depository Receipts on the record date (which will be the same date as the record date for the related Preferred Stock) will be entitled to instruct the Preferred Stock Depository as to the exercise of the voting rights pertaining to the number of shares of Preferred Stock underlying such holder's Depository Shares. The Preferred Stock Depository will endeavor, insofar as practicable, to vote the number of shares of Preferred Stock underlying such Depository Shares in accordance with such instructions, and the Corporation will agree to take all

action which may be deemed necessary by the Preferred Stock Depository in order to enable the Preferred Stock Depository to do so. The

Preferred Stock Depository will abstain from voting shares of Preferred Stock to the extent it does not receive specific instructions from the holders of Depository Receipts relating to such Preferred Stock.

#### AMENDMENT AND TERMINATION OF THE DEPOSIT AGREEMENT

The form of Depository Receipt evidencing the Depository Shares and any provision of the Deposit Agreement may at any time be amended by agreement between the Corporation and the Preferred Stock Depository. However, unless otherwise indicated in the applicable Prospectus Supplement, any amendment which materially and adversely alters the rights of the existing holders of Depository Shares will not be effective unless such amendment has been approved by the record holders of a majority of the Depository Shares then outstanding. No such amendment may impair the rights, subject to the terms of the Deposit Agreement, of any owner of any Depository Shares to surrender the Depository Receipts evidencing such Depository Shares with instructions to the Preferred Stock Depository to deliver to the holder the Preferred Stock and all money and other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law. A Deposit Agreement may be terminated by the Corporation or the Preferred Stock Depository only if (i) all outstanding Depository Shares relating thereto have been redeemed or surrendered by the holders thereof or (ii) there has been a final distribution in respect of the Preferred Stock of the relevant series in connection with any liquidation, dissolution or winding up of the Corporation and such distribution has been distributed to the holders of the related Depository Shares.

#### CHARGES OF PREFERRED STOCK DEPOSITARY

The Corporation will pay all transfer and other taxes and governmental charges arising solely from the existence of the Preferred Stock Depository arrangements. The Corporation will pay charges of the Preferred Stock Depository in connection with the initial deposit of the Preferred Stock and any redemption of the Preferred Stock and all withdrawals of Preferred Stock by owners of Depository Shares. Holders of Depository Shares will pay transfer and other taxes and governmental charges and such other charges as are expressly provided in the Deposit Agreement to be for their accounts.

#### MISCELLANEOUS

The Preferred Stock Depository will forward to the holders of Depository Shares all reports and communications from the Corporation which are delivered to the Preferred Stock Depository and which the Corporation is required to furnish to the holders of Preferred Stock. In addition, the Preferred Stock Depository will make available for inspection by holders of Depository Receipts at the principal office of the Preferred Stock Depository, and at such other places as it may from time to time deem advisable, any reports and communications received from the Corporation which are received by the Preferred Stock Depository as the holder of Preferred Stock.

Neither the Preferred Stock Depository nor the Corporation will be liable if it is prevented or delayed by law or any circumstance beyond its control in performing its respective obligations under the Deposit Agreement. Neither the Preferred Stock Depository nor the Corporation shall be liable under the Deposit Agreement except for its negligence or willful misconduct. The obligations of the Corporation and the Preferred Stock Depository under the Deposit Agreement will be limited to performance in good faith of their duties thereunder and they will not be obligated to prosecute or defend any legal proceeding in respect of any Depository Shares or Preferred Stock unless satisfactory indemnity is furnished. In the performance of their duties, the Corporation and the Preferred Stock Depository may rely upon (a) written advice of counsel or accountants, (b) information provided by persons presenting Preferred Stock for deposit, by holders of Depository Shares or by other persons believed to be competent, and (c) documents believed by them to be genuine.

#### RESIGNATION AND REMOVAL OF PREFERRED STOCK DEPOSITARY

The Preferred Stock Depositary may resign at any time by delivering to the Corporation notice of its election to do so, and the Corporation may at any time remove the Preferred Stock Depositary, any such resignation or removal to take effect upon the appointment of a successor Preferred Stock Depositary and its acceptance of such appointment. Such successor Preferred Stock Depositary must be appointed within 90

18

20

days after delivery of the notice of resignation or removal and must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50,000,000.

#### FEDERAL INCOME TAX CONSEQUENCES

Owners of the Depositary Shares will be treated for federal income tax purposes as if they were owners of the Preferred Stock represented by such Depositary Shares. Accordingly, such owners will be entitled to take into account for federal income tax purposes income and deductions to which they would be entitled if they were holders of such Preferred Stock. In addition, (i) no gain or loss will be recognized for federal income tax purposes upon the withdrawal of Preferred Stock in exchange for Depositary Shares, (ii) the tax basis of each share of Preferred Stock to an exchanging owner of Depositary Shares will, upon such exchange, be the same as the aggregate tax basis of the Depositary Shares exchanged therefor, and (iii) the holding period for Preferred Stock in the hands of an exchanging owner of Depositary Shares will include the period during which such person owned such Depositary Shares.

#### DESCRIPTION OF WARRANTS

##### GENERAL

The Corporation may issue warrants ("Warrants"), including Warrants to purchase Debt Securities, Warrants to purchase Common Stock, Warrants to purchase securities issued by another corporation or entity and held by the Corporation and other types of Warrants. Warrants may be issued independently or together with Debt Securities, Preferred Stock or Depositary Shares offered by any Prospectus Supplement and may be attached to or separate from such Debt Securities, Preferred Stock or Depositary Shares. Each series of Warrants will be issued under a separate warrant agreement (each a "Warrant Agreement" and collectively, the "Warrant Agreements") to be entered into between the Corporation and a warrant agent (the "Warrant Agent"), all as set forth in the applicable Prospectus Supplement. The Warrant Agent will act solely as an agent of the Corporation in connection with the Warrant certificates relating to the Warrants and will not assume any obligation or relationship of agency or trust for or with any holders of Warrant certificates or beneficial owners of Warrants.

The following summaries of certain provisions of the Warrant Agreements and the Warrants do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all the provisions of the Warrant Agreement and the Warrant certificates relating to each series of Warrants which will be filed as an exhibit or incorporated by reference into the Registration Statement of which this Prospectus is a part at or prior to the time of the issuance of such series of Warrants.

If Warrants are offered, the applicable Prospectus Supplement will describe the terms of such Warrants, including the following, where applicable: (i) the offering price; (ii) the number, amount, designation, exercise price and terms, as the case may be, of Common Stock, Debt Securities or other securities purchasable upon exercise of such Warrants (the "Warrant Securities"); (iii) the designation and terms of any series of Debt Securities, Preferred Stock or Depositary Shares with which Warrants are being offered and the number of such Warrants being offered with each such Debt Security, share of Preferred Stock or Depositary Share; (iv) the date, if any, on and after which such Warrants and the related series of Debt Securities, Preferred Stock or Depositary Shares will be transferable separately; (v) the date on which the right to exercise such Warrants shall commence and the date on which such right shall expire (the "Expiration Date"); (vi) whether the Warrants will be issued in registered or bearer form; (vii) any special federal income tax consequences; (viii) the terms, if any, on which the Corporation may accelerate the date by which the

Warrants must be exercised; and (ix) any other terms of such Warrants.

Warrant certificates may (i) be exchanged for new Warrant certificates of different denominations, (ii) if in registered form, be presented for registration of transfer, and (iii) be exercised at the corporate trust office of the Warrant Agent or any other office indicated in the applicable Prospectus Supplement. Prior to the exercise of any Warrant to purchase Debt Securities, holders of such Warrants will not have any of the rights of holders of Debt Securities purchasable upon such exercise, including the right to receive payments of

19

21

principal of, premium, if any, or interest, if any, on such Debt Securities or to enforce covenants in the applicable Indenture. Prior to the exercise of any Warrants to purchase Common Stock or other securities, holders of such Warrants will not have any rights of holders of such Common Stock or other securities, including the right to receive payments of dividends, if any, or to exercise voting rights.

Any Warrants issued by the Corporation will involve a certain degree of risk, including risks arising from fluctuations in the price of the underlying securities and general risks applicable to the securities market (or markets) on which the underlying securities are traded. These risks reflect the nature of a Warrant as an asset which, other factors held constant, tends to decline in value over time and which becomes worthless upon expiration. Prospective purchasers of the Warrants should be experienced with respect to options and option transactions and understand the risks associated with options.

#### EXERCISE OF WARRANTS

Each Warrant will entitle the holder thereof to purchase such principal amount of Debt Securities or number of shares of Common Stock or other securities, as the case may be, at such exercise price as shall in each case be set forth in, or calculable from, the applicable Prospectus Supplement. After the close of business on the Expiration Date (or such later date to which such Expiration Date may be extended by the Corporation), unexercised Warrants will become void.

Warrants may be exercised by delivering to the Warrant Agent payment as provided in the applicable Prospectus Supplement of the amount required to purchase the Debt Securities, Common Stock or other securities, as the case may be, purchasable upon such exercise, together with certain information set forth on the reverse side of the Warrant certificate. Warrants will be deemed to have been exercised upon receipt of payment of the exercise price, subject to receipt within 5 business days of the Warrant certificate evidencing such Warrants. Upon receipt of such payment and the Warrant certificate properly completed and duly executed at the office of the Warrant Agent or any other office indicated in the applicable Prospectus Supplement, the Corporation will, as soon as practicable, issue and deliver the Debt Securities, Common Stock or other securities, as the case may be, purchasable upon such exercise. If fewer than all of the Warrants represented by such Warrant certificate are exercised, a new Warrant certificate will be issued for the remaining Warrants.

#### AMENDMENTS AND SUPPLEMENTS TO WARRANT AGREEMENTS

The Warrant Agreements may be amended or supplemented without the consent of the holders of the Warrants issued thereunder to effect changes that are not inconsistent with the provisions of the Warrants and that do not adversely affect the interests of the holders of the Warrants.

#### COMMON STOCK WARRANT ADJUSTMENTS

Unless otherwise specified in the applicable Prospectus Supplement, the exercise price of, and the number of shares of Common Stock purchasable upon exercise of a Warrant to purchase Common Stock will be subject to adjustment in certain events as set forth in the applicable Prospectus Supplement.

20



## PLAN OF DISTRIBUTION

The Corporation may sell Securities (1) through underwriters or dealers, (2) directly to one or more purchasers, or (3) through agents. The applicable Prospectus Supplement will set forth the terms of the Securities offered thereby, including the name or names of any underwriters, the purchase price of the Securities, and the proceeds to the Corporation from the sale, any underwriting discounts and other items constituting underwriters' compensation, any initial public offering price, any discounts or concessions allowed or reallocated or paid to dealers, and any securities exchange or market on which the Securities may be listed.

If underwriters are used in the sale, the Securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the Securities will be subject to certain conditions precedent, and the underwriters will be obligated to purchase all the Securities of the series offered by the applicable Prospectus Supplement if any of the Securities are purchased. Any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

Securities may also be sold directly by the Corporation through agents designated by the Corporation from time to time. Any agent involved in the offering and sale of Securities in respect of which this Prospectus is delivered will be named, and any commissions payable by the Corporation to such agent will be set forth, in the applicable Prospectus Supplement. Unless otherwise indicated in the applicable Prospectus Supplement, any such agent will be acting on a best-efforts basis for the period of its appointment.

The distribution of Securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed, at prices related to prevailing market prices at the time of sale or at negotiated prices.

In connection with the sale of Securities, underwriters or agents may receive compensation from the Corporation or from purchasers of Securities for whom they may act as agent, in the form of discounts, concessions or commissions. Underwriters, dealers and agents that participate in the distribution of Securities may be deemed to be underwriters within the meaning of the Securities Act, and any discounts or commissions received by them from the Corporation and any profit on the resale of Securities by them may be deemed to be underwriting discounts and commissions under the Securities Act.

If so indicated in the applicable Prospectus Supplement, the Corporation will authorize underwriters, agents or dealers to solicit offers by certain institutions to purchase Securities from the Corporation at the public offering price set forth in the Prospectus Supplement pursuant to delayed delivery contracts ("Contracts") providing for payment and delivery on the date or dates stated in the applicable Prospectus Supplement. There may be limitations on the minimum amount which may be purchased by any such institutional investor or on the portion of the aggregate amount of the particular Securities which may be sold pursuant to such arrangements. Institutions with whom Contracts, when authorized, may be made include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions, and other institutions but will in all cases be subject to the approval of the Corporation. Contracts will not be subject to any conditions except: (a) the purchase by an institution of the Securities covered by its Contract shall not at the time of delivery be prohibited under the laws of any jurisdiction in the United States to which such institution is subject; and (b) if the Securities are being sold to underwriters, the Corporation shall have sold to such underwriters the total amount of the Securities less the amount thereof covered by Contracts. The underwriters will not have any responsibility in respect of the validity or performance of the Contracts.

Unless otherwise indicated in the applicable Prospectus Supplement, all Securities offered will be a new issue of securities with no established trading market. Any underwriters to whom such Securities are sold by the Corporation for public offering and sale may make a market in such Securities, but such underwriters will not be obligated to do so and may discontinue any market making at any time without notice. No assurance can be given as to the liquidity



of or the trading markets for any such Securities.

Agents and underwriters may engage in transactions with, or perform services for, the Corporation in the ordinary course of business.

Under agreements which may be entered into by the Corporation, dealers and agents who participate in the distribution of Securities may be entitled, and the Corporation has agreed that underwriters, if any, will be entitled, to indemnification by the Corporation against certain liabilities, including liabilities under the Securities Act.

LEGAL OPINIONS

The validity of the Offered Securities will be passed upon for the Corporation by Testa, Hurwitz & Thibeault, Boston, Massachusetts, and for any underwriters, dealers or agents by Goodwin, Procter & Hoar, Boston, Massachusetts. From time to time, Goodwin, Procter & Hoar serves as special counsel to the Corporation as to certain environmental matters.

EXPERTS

The consolidated balance sheets of the Corporation as of July 3, 1993 and June 27, 1992, and the related consolidated statements of operations, cash flows, and stockholders' equity for each of the three years in the period ended July 3, 1993, and the related financial statement schedules, all included in the Corporation's Annual Report on Form 10-K for the fiscal year ended July 3, 1993, incorporated by reference in this Prospectus, have been incorporated herein in reliance on the report, which includes an explanatory paragraph indicating that the Corporation changed its method of accounting for post retirement benefits other than pensions in 1992, of Coopers & Lybrand, independent accountants, given on the authority of that firm as experts in accounting and auditing.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

<TABLE>  
ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following table sets forth the estimated costs and expenses (other than underwriting discounts and commissions) payable in connection with the distribution of the Securities registered hereby.

<CAPTION>

	AMOUNT
	-----
<S>	<C>
Securities and Exchange Commission registration fee.....	\$344,828
Printing and engraving expenses.....	8,000
Legal fees and expenses.....	75,000
Accounting fees and expenses.....	20,000
Blue Sky fees and expenses (including legal fees).....	1,000
Trustee fees and expenses.....	2,500
Depositary fees and expenses.....	10,000
Rating agency fees.....	135,000
Miscellaneous.....	53,672
	-----
Total.....	\$650,000
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<FN>  
All of the above are estimated except the Securities and Exchange Commission registration fee.

</TABLE>

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Any Underwriters who execute either the Underwriting Agreement for Debt Securities and Warrants to Purchase Debt Securities or the Underwriting Agreement for Preferred Shares, Depositary Shares and Warrants to Purchase Equity Securities filed as Exhibit 1.1 and Exhibit 1.2, respectively, to this Registration Statement, will agree to indemnify the Corporation's directors and officers who sign this Registration Statement against certain liabilities which might arise under the Securities Act of 1933 (the "Act") from information furnished to the Corporation by or on behalf of any such indemnifying party.

The Corporation is required by its By-laws generally to indemnify any director, officer or employee against all expenses and liabilities reasonably incurred by or imposed upon such person in connection with any legal action in which such person is involved by reason of such person's position with the Corporation unless such person shall have been finally adjudicated in any action, suit or proceeding not to have acted in good faith in the reasonable belief that such person's action was in the best interests of the Corporation. The Corporation may pay expenses incurred by any such person in defending a civil or criminal action or proceeding in advance of the final disposition of such action upon the Corporation's receipt of the undertaking of such person to repay such amount if such person shall be adjudicated not to be entitled to indemnification.

The Corporation's Restated Articles include a provision limiting the personal liability of a director of the Corporation to its stockholders for monetary damages for breaches of their fiduciary duty except (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under section sixty-one or sixty-two of Chapter 156B of the Massachusetts General Laws, or (iv) for any transaction from which the director derived an improper personal benefit.

Directors and officers are also insured against certain liabilities under directors and officers' liability insurance policies maintained by the Corporation.

<TABLE>  
ITEM 16. EXHIBITS.

<CAPTION>

EXHIBIT NO.	DESCRIPTION	PAGE
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<C> <S>		<C>
1.1	--Form of Underwriting Agreement for Debt Securities and Warrants to Purchase Debt Securities.....	

</TABLE>

II-1

25

<TABLE>  
<CAPTION>

EXHIBIT NO.	DESCRIPTION	PAGE
-----	-----	-----
<C> <S>		<C>
1.2	--Form of Underwriting Agreement for Preferred Shares, Depositary Shares and Warrants to Purchase Equity Securities.....	
4.1	--Indenture relating to the Senior Debt Securities dated as of September 15, 1992 between Citibank, N.A., as Trustee, and the Corporation (including form of Senior Debt Securities), filed as Exhibit 4 to the Corporation's Registration Statement on Form S-3, Registration Number 33-51378, filed on August 27, 1992, is hereby incorporated by reference.....	
4.2	--Form of Indenture relating to the Subordinated Debt Securities between Bankers Trust Company, as Trustee, and the Corporation (including form of Subordinated Debt Securities).....	
4.3	--Articles of Amendment filed with the Secretary of State of the Commonwealth of Massachusetts on November 4, 1993.....	
*4.4	--Specimen Certificate of Preferred Stock of the Corporation.....	

4.5	--Form of Depositary Receipt (included in Exhibit 4.6).....
4.6	--Form of Deposit Agreement.....
4.7	--Form of Standard Debt Securities Warrant Agreement Provisions.....
4.8	--Form of Standard [Common Stock/Exchange Securities] Warrant Agreement Provisions.....
5	--Opinion of Testa, Hurwitz & Thibeault, counsel to the Corporation, as to the legality of the Securities being registered.....
12	--Computation of ratio of earnings to fixed charges.....
23.1	--Consent of Coopers & Lybrand.....
23.2	--Consent of Testa, Hurwitz & Thibeault (included in Exhibit 5).....
24.1	--Power of Attorney (See page II-5).....
25	--Statement of Eligibility and Qualification of Subordinated Debt Securities Trustee on Form T-1.....

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 \* To be filed by amendment.  
 </TABLE>

ITEM 17. UNDERTAKINGS.

The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Act;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement;
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") that are incorporated by reference in this Registration Statement;

II-2

26

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

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

(4) That, for purposes of determining any liabilities under the Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Act shall be deemed to be part of this Registration Statement as of the time it was declared effective;

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

(6) To file an application for the purpose of determining the eligibility

of the trustee, with respect to the Indenture relating to the Subordinated Debt Securities, to act under Subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Act.

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

Insofar as indemnification for liabilities arising under the Act may be permitted to directors, officers and controlling persons of the Corporation pursuant to the foregoing provisions described in Item 15 above and under an Underwriting Agreement, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

II-3

27

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the Town of Maynard and the Commonwealth of Massachusetts, on this 21st day of January 1994.

DIGITAL EQUIPMENT CORPORATION

ROBERT B. PALMER

By:.....

ROBERT B. PALMER  
PRESIDENT AND CHIEF EXECUTIVE  
OFFICER

<TABLE>

POWER OF ATTORNEY

EACH PERSON WHOSE SIGNATURE appears below in this Registration Statement hereby constitutes and appoints Robert B. Palmer, William M. Steul and Gail S. Mann and each of them, with full power to act without the other, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead in any and all capacities (until revoked in writing) to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-3 of Digital Equipment Corporation, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission or any state securities commission or other governmental entity pertaining to such registration and sale, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary fully to all intents and purposes as he might or could do in person thereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his or her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this

Registration Statement has been signed by the following persons in the capacities and on the date indicated:

<CAPTION>	SIGNATURE -----	CAPACITY -----	DATE ----
<C>	ROBERT B. PALMER ..... ROBERT B. PALMER	<S> President, Chief Executive Officer (Principal Executive Officer) and Director	<C> January 21, 1994
	WILLIAM M. STEUL ..... WILLIAM M. STEUL	Vice President -- Finance and Chief Financial Officer (Principal Financial Officer)	January 21, 1994
	VINCENT J. MULLARKEY ..... VINCENT J. MULLARKEY	Vice President and Corporate Controller (Principal Accounting Officer)	January 21, 1994
	VERNON R. ALDEN ..... VERNON R. ALDEN	Director	January 21, 1994
	PHILIP CALDWELL ..... PHILIP CALDWELL	Director	January 21, 1994
	COLBY H. CHANDLER ..... COLBY H. CHANDLER	Director	January 21, 1994

</TABLE>

II-4

28

<TABLE> <CAPTION>	SIGNATURE -----	CAPACITY -----	DATE ----
<C>	ARNAUD DE VITRY ..... ARNAUD DE VITRY	<S> Director	<C> January 21, 1994
	ROBERT R. EVERETT ..... ROBERT R. EVERETT	Director	January 21, 1994
	KATHLEEN F. FELDSTEIN ..... KATHLEEN F. FELDSTEIN	Director	January 21, 1994
	THOMAS P. GERRITY ..... THOMAS P. GERRITY	Director	January 21, 1994
	THOMAS L. PHILLIPS ..... THOMAS L. PHILLIPS	Director	January 21, 1994
	DELBERT C. STALEY ..... DELBERT C. STALEY	Director	January 21, 1994

</TABLE>

II-5

DIGITAL EQUIPMENT CORPORATION  
(a Massachusetts corporation)

Debt Securities and Warrants to Purchase Debt Securities

UNDERWRITING AGREEMENT - BASIC PROVISIONS

\_\_\_\_\_, 1994

To: The Underwriters named in  
the within-mentioned Terms  
Agreement

Dear Sirs:

Digital Equipment Corporation (the "Company") proposes to issue and sell from time to time in one or more offerings, on terms determined at the time of sale, any or a combination of the following securities: senior debt securities (the "Senior Securities"), subordinated debt securities (the "Subordinated Securities," and together with the Senior Securities, the "Debt Securities") and warrants (the "Debt Warrants" and together with the Debt Securities, the "Firm Securities") to purchase Senior Securities or Subordinated Securities. In certain cases, the applicable Terms Agreement (as defined below) may provide that the Company grants to the Underwriters the option to purchase additional Convertible Subordinated Securities (as defined below) or Debt Warrants to purchase additional Convertible Subordinated Securities (the "Optional Securities"); if and to the extent that the right to purchase such Optional Securities is granted as herein described, the terms and conditions of any such option will be described in the applicable Prospectus Supplement and Terms Agreement (each as hereinafter defined). The Firm Securities and the Optional Securities are herein collectively referred to as the "Securities."

The Senior Securities will be issued under an indenture dated as of September 15, 1992, as amended (the "Senior Indenture"), between the Company and Citibank, N.A., as Trustee (the "Senior Trustee"), and the Subordinated Securities will be issued under an indenture dated January \_\_, 1994, as amended (the "Subordinated Indenture" and together with the Senior Indenture, the "Indentures"), between the Company and Bankers Trust Company, as Trustee (the "Subordinated Trustee," and together with the Senior Trustee, the "Trustees"). Each series of Debt Warrants will be issued under a separate warrant agreement (the warrant agreement relating to any issue of Debt Warrants to be sold pursuant to this Agreement will be identified in the applicable Terms Agreement (as hereinafter defined) and is referred to herein as the "Warrant Agreement") to be entered into between the Company and a warrant agent identified in such Warrant Agreement (the "Warrant Agent"), all as set forth in the applicable Prospectus Supplement (as hereinafter defined). Each issue of Senior Securities and Subordinated Securities may vary, as applicable, as to aggregate principal amount, maturity date or dates, interest rate or rates or formula and timing of payments thereof, redemption provisions and sinking fund requirements, if any, and any other variable terms which the Senior Indenture or Subordinated Indenture, as the case may be, contemplates may be set forth in the Senior Securities or Subordinated Securities as issued from time to time. The terms of any series of Subordinated Securities may further provide that the Subordinated Securities are convertible (the "Convertible Subordinated Securities") into shares of the Company's common stock, par value \$1.00 per share ("Common Stock"), or that the Subordinated Securities are exchangeable (the "Exchangeable Subordinated Securities") for equity securities of other issuers held by the Company (the "Exchange Securities"), at any time prior to the maturity of the Subordinated Securities, unless the Subordinated Securities have been previously redeemed or otherwise acquired by the Company, upon the terms and subject to the conditions set forth in the Subordinated Indenture. Each series of Debt

Warrants may vary as to the date from which they are exercisable, the expiration date, the exercise price and any other variable terms which the Warrant Agreement contemplates may be set forth in the Debt Warrants as issued from time to time. The Senior Securities or the Subordinated Securities

(including Convertible or Exchangeable Subordinated Securities, if applicable) and the Debt Warrants may be offered either together or separately. As used herein, "Warrant Securities" shall mean the Senior Securities or Subordinated Securities issuable upon exercise of Debt Warrants.

Whenever the Company determines to make an offering of Securities, it will enter into an agreement substantially in the form of Exhibit A hereto (the "Terms Agreement") providing for the sale of such Securities to, and the purchase and offering thereof by, the underwriter or underwriters named therein (the "Underwriters" or "you," which terms shall include the underwriter or underwriters named therein whether acting alone in the sale of Securities or as members of an underwriting syndicate). The Terms Agreement relating to each offering of Securities shall specify the principal amount of Securities to be issued and their terms not otherwise specified in the Senior Indenture, Subordinated Indenture or Warrant Agreement, as the case may be, whether the Underwriters have an option to purchase Optional Securities, the name or names of the Underwriters participating in such offering (subject to substitution as provided in Section 10 hereof) and the principal amount (in the case of Debt Securities) or number (in the case of Debt Warrants) of Securities which each severally agrees to purchase, the name or names of the Underwriters acting as manager or co-managers in connection with such offerings, if any (the "Representatives," which term shall include each Underwriter in the event that there shall be no manager or co-managers), the price at which the Securities are to be purchased by the Underwriters from the Company, the initial public offering price, any delayed delivery arrangements and the time and place of delivery and payment. Each offering of Securities will be governed by this Agreement, as supplemented by the applicable Terms Agreement, and this Agreement and such Terms Agreement shall inure to the benefit of and be binding upon each Underwriter participating in the offering of such Securities.

The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (No. 33-\_\_\_\_\_) relating to the Securities and the shares of Common Stock issuable upon conversion of Convertible Subordinated Securities and the offering of the Securities from time to time in accordance with Rule 415 under the Securities Act of 1933 (the "1933 Act") and has filed such amendments thereto, if any, as may have been required to the date hereof, and will file such additional amendments thereto and such amended prospectuses as may hereafter be required. Such registration statement (as amended, if applicable) and the prospectus constituting a part thereof, as from time to time amended or supplemented pursuant to the 1933 Act, the Securities and Exchange Act of 1934, as amended (the "1934 Act"), or otherwise, are hereinafter referred to as the "Registration Statement" and the "Prospectus," respectively; PROVIDED, HOWEVER, that a supplement of the Prospectus contemplated by Section 3(a) hereof (a "Prospectus Supplement") shall be deemed to have supplemented the Prospectus only with respect to the offering of Securities to which it relates. If any revised prospectus shall be provided to the Underwriters by the Company for use in connection with the offering of the Securities which differs from the Prospectus on file at the Commission (whether or not such revised prospectus is required to be filed by the Company pursuant to Rule 424(b) of the 1933 Act Regulations), the term "Prospectus" shall refer to such revised prospectus from and after the time it is first provided to the Underwriters for such use. All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include the filing of any document under the 1934 Act which is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

2

3

SECTION 1. REPRESENTATIONS AND WARRANTIES.

(a) The Company represents and warrants to each Underwriter as of the date of the applicable Terms Agreement and as of the First Closing Time and Second Closing Time, if applicable (as defined in Section 2 hereof; in each case, the "Representation Date") as follows:

(i) At the time the Registration Statement becomes effective and as of the applicable Representation Date, the Registration Statement will comply in all material respects with the

requirements of the 1933 Act, the rules and regulations of the Commission under the 1933 Act (the "1933 Act Regulations"), the Trust Indenture Act of 1939, as amended (the "1939 Act"), and the rules and regulations of the Commission under the 1939 Act (the "1939 Act Regulations"). The Registration Statement, at the time the Registration Statement becomes effective (or, if an amendment to the Registration Statement or an annual report on Form 10-K has been filed by the Company with the Commission subsequent to the effectiveness of the Registration Statement, then at the time of the most recent such filing) will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Prospectus, at the time the Registration Statement becomes effective and at the applicable Representation Date (unless the term "Prospectus" refers to a prospectus which has been provided to the Underwriters by the Company for use in connection with the offering of the Securities which differs from the Prospectus on file at the Commission at the time the Registration Statement becomes effective, in which case at the time it is first provided to the Underwriters for such use), will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement or Prospectus made in reliance upon and in conformity with information furnished to the Company in writing by any Underwriter or on behalf of any Underwriter expressly for use in the Registration Statement or Prospectus or to that part of the Registration Statement which shall constitute the Statement of Eligibility and Qualification under the 1939 Act (Form T-1) of the Trustees under the Senior Indenture and the Subordinated Indenture.

(ii) The accountants who certified the financial statements and supporting schedules included in the Registration Statement are independent public accountants as required by the 1933 Act and the 1933 Act Regulations.

(iii) The consolidated financial statements included in the Registration Statement and the Prospectus present fairly the financial position of the Company and its consolidated subsidiaries as at the dates indicated and the results of their operations for the periods specified; except as otherwise stated in the Registration Statement or in said financial statements, said financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis; the supporting schedules included in the Registration Statement present fairly the information required to be stated therein; and the Company's ratios of earnings to fixed charges (actual and, if any, pro forma) included in the Prospectus under the caption "Ratio of Earnings to Fixed Charges," in the applicable Prospectus Supplement under the captions "Ratio of Earnings to Fixed Charges" and "Summary Financial Information" and in Exhibit 12 to the Registration Statement have been calculated in compliance with Item 503(d) of Regulation S-K of the Commission.

3

4

(iv) The documents incorporated or deemed to be incorporated by reference in the Prospectus, at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission under the 1934 Act (the "1934 Act Regulations"), and, when read together with the other information in the Prospectus, at the time the Registration Statement and any amendments thereto become effective and at the applicable Representation Date, will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(v) Since the respective dates as of which information is



given in the Registration Statement and the Prospectus, except as otherwise stated therein, (A) there has been no material adverse change in the condition, financial or otherwise, of the Company and its subsidiaries considered as one enterprise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, (B) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its subsidiaries considered as one enterprise and (C) except for regular periodic dividends, if any, on shares of Common Stock, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(vi) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the Commonwealth of Massachusetts with corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and to enter into and perform its obligations under this Agreement and the Terms Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which the character or location of its properties or the nature or the conduct of its business requires such qualification, except where the failure to be so qualified or to be in good standing would not have a material adverse effect on the Company and its subsidiaries considered as one enterprise.

(vii) Each subsidiary of the Company listed in Exhibit No. 22 to the Form 10-K annual report of the Company filed with the Commission under Section 13 of the 1934 Act for the most recent fiscal year ended which is a "significant subsidiary" as defined in Rule 405 of Regulation C of the 1933 Act Regulations (a "Significant Subsidiary"), if any, has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which the character or location of its properties or the nature or the conduct of its business requires such qualification, except where the failure to be so qualified or to be in good standing would not have a material adverse effect on the Company and its subsidiaries considered as one enterprise; all of the issued and outstanding capital stock of each such Significant Subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity.

(viii) Neither the Company nor any of its Significant Subsidiaries is in violation of its charter or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any material contract, indenture, mortgage, loan

agreement, note, lease or other instrument to which the Company or any of its Significant Subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or any of its Significant Subsidiaries is subject, the effect of which violation or default would be material to the Company and its subsidiaries considered as one enterprise; and the execution, delivery and performance of this Agreement, the applicable Terms Agreement (including this Agreement as incorporated by reference therein), the applicable Indenture, the Warrant Agreement, if any, and the Securities, the filing of the Registration Statement and the consummation of the transactions contemplated herein and therein and compliance by the Company with its obligations hereunder and thereunder have been duly authorized by all necessary corporate action and will not conflict with or constitute a breach of, or default under, or

result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its Significant Subsidiaries pursuant to, any material contract, indenture, mortgage, loan agreement, note, lease or other instrument to which the Company or any of its Significant Subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or any of its Significant Subsidiaries is subject, nor will such action result in any violation of the provisions of the charter or by-laws of the Company, or, to the best of its knowledge, any applicable law, administrative regulation or administrative or court decree.

(ix) No labor dispute with the employees of the Company or any of its Significant Subsidiaries exists or, to the knowledge of the Company, is imminent and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers or contractors, which might be expected to result in any material adverse change in the condition, financial or otherwise, or in the earnings or operations of the Company and its subsidiaries considered as one enterprise.

(x) There is no action, suit or proceeding before or by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company, threatened, against the Company or any of its subsidiaries, which is required to be disclosed in the Registration Statement (other than as disclosed therein), or which might result in any material adverse change in the condition, financial or otherwise, or in the earnings or operations of the Company and its subsidiaries considered as one enterprise, or which might materially and adversely affect the properties or assets thereof or which might materially and adversely affect the consummation of this Agreement and the applicable Terms Agreement; there are no contracts or documents of the Company or any of its subsidiaries which are required to be filed as exhibits to the Registration Statement by the 1933 Act or by the 1933 Act Regulations which have not been so filed.

(xi) The Company and its subsidiaries own or possess, or can acquire on reasonable terms, the patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names (collectively, "patent and proprietary rights") presently employed by them in connection with the business now operated by them, except where the failure to own or possess or acquire on reasonable terms, the patent and proprietary rights, singly or in the aggregate, would not result in any material adverse change in the condition, financial or otherwise, or in the earnings or operations of the Company and its subsidiaries, considered as one enterprise, and neither the Company nor any of its subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any patent or proprietary rights, or of any facts which would render any patent and proprietary rights invalid or inadequate to protect the interest of the Company or any of

5

6

its subsidiaries therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, singly or in the aggregate, would result in any material adverse change in the condition, financial or otherwise, or in the earnings or operations of the Company and its subsidiaries considered as one enterprise.

(xii) No authorization, approval or consent of any court or governmental authority or agency is necessary in connection with the consummation by the Company of the transactions contemplated by this Agreement and by the applicable Terms Agreement, including the offering, issuance or sale of the Securities hereunder, except such as may be required under the 1933 Act or the 1933 Act Regulations, the 1939 Act or state securities or Blue Sky laws and the qualification of the Indentures under the 1939 Act.

(xiii) The Company and its Significant Subsidiaries possess

such certificates, authorities or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct the business now operated by them, except such certificates, authorities or permits which are not material to such conduct of their business, and neither the Company nor any of its Significant Subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would materially and adversely affect the condition, financial or otherwise, or the earnings or operations of the Company and its subsidiaries considered as one enterprise.

(xiv) The Securities have been duly authorized for issuance and sale pursuant to this Agreement and the applicable Terms Agreement (or will have been so authorized prior to each issuance of Securities), will have been duly executed by the Company and, when issued, authenticated and delivered pursuant to the provisions of this Agreement and the applicable Terms Agreement and the applicable Indenture or Warrant Agreement, as the case may be, against payment of the consideration therefor in accordance with this Agreement and the applicable Terms Agreement, the Securities will be valid and legally binding obligations of the Company enforceable in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws relating to or affecting enforcement of creditors' rights or by general equity principles, and will be entitled to the benefits of the respective Indenture or Warrant Agreement, as the case may be, relating thereto, which will be substantially in the form heretofore delivered to the Underwriters; the Securities, the Senior Indenture, the Subordinated Indenture and the Warrant Agreement, conform in all material respects to all statements relating thereto contained in the Prospectus. This Agreement has been, and, at the Representation Date, the applicable Terms Agreement will have been, duly executed and delivered by the Company.

(xv) The Indentures have been duly authorized by the Company, have been duly qualified under the 1939 Act and duly executed and delivered by the Company and constitute valid and binding agreements of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles.

(xvi) The Warrant Agreement has been duly authorized by the Company and, when executed by the proper officers of the Company and delivered (assuming due execution and delivery thereof by the Warrant Agent), will constitute a valid and legally binding instrument of the Company enforceable in accordance with its terms, except as enforcement thereof may be

6

7

limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles.

(xvii) If the applicable Terms Agreement relates to Convertible Subordinated Securities, the shares of Common Stock issuable upon conversion of such Convertible Subordinated Securities have been duly authorized and reserved for issuance upon such conversion and, when issued and delivered upon such conversion, will be validly issued, fully paid and nonassessable and will conform to the description thereof contained in the Prospectus. The Company has the authorized capital stock as set forth in the Prospectus and the shareholders of the Company have no preemptive rights with respect to the Securities or the Common Stock. No further approval or authority of the stockholders or the Board of Directors of the Company will be required for the issuance of the Common Stock upon exercise of the Convertible Subordinated Securities.

(xviii) If the applicable Terms Agreement relates to Debt Warrants, the Warrant Securities issuable upon exercise of the Debt

Warrants are duly and validly authorized, have been duly reserved for issuance upon exercise of the Debt Warrants, and when issued upon the exercise of the Debt Warrants in accordance with the terms of the Warrant Agreement, will be duly executed by the Company and, when issued, authenticated and delivered in the manner provided in the applicable Indenture, will constitute valid and binding obligations of the Company in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles and will be entitled to the benefits of the applicable Indenture. No further approval or authority of the stockholders or the Board of Directors of the Company will be required for the issuance of the Warrant Securities upon exercise of the Debt Warrants.

(xix) If the applicable Terms Agreement relates to Exchangeable Subordinated Securities, such Terms Agreement will contain additional representations and warranties from the Company relating to the applicable Exchange Securities.

(b) Any certificate signed by any authorized officer of the Company and delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

## SECTION 2. SALE AND DELIVERY TO UNDERWRITERS; CLOSING.

(a) The several commitments of the Underwriters to purchase Securities pursuant to any Terms Agreement shall be deemed to have been made on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth. The Company agrees to sell to each Underwriter and each Underwriter, severally and not jointly, agrees to purchase at the price set forth in the applicable Terms Agreement, the aggregate principal amount of Debt Securities and/or the number of Debt Warrants set forth in the applicable Terms Agreement, plus any additional principal amount of Debt Securities and/or number of Debt Warrants, which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof. The initial public offering price and the purchase price to be paid by the several Underwriters for the Securities and any other terms of the Securities (to the extent not set forth in the applicable Indenture, Warrant Agreement or in this Agreement) have been determined and set forth in the applicable Terms Agreement.

7

8

(b) Payment of the purchase price for, and delivery of certificates for, the Securities shall be made at the place set forth in the applicable Terms Agreement or at such other place as shall be agreed upon by the Representatives and the Company, at 10:00 A.M. on the fifth business day (unless postponed in accordance with the provisions of Section 10) following the date of the applicable Terms Agreement or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called the "First Closing Time"). Payment shall be made to the Company by certified or official bank check or checks drawn in New York Clearing House funds or similar next day funds payable to the order of the Company, against delivery to the Representatives for the respective accounts of the Underwriters of certificates or other instruments representing the Securities to be purchased by them. Certificates for the Securities shall be in such denominations and registered in such names as the Representatives may request in writing at least two business days before the First Closing Time. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Securities which it has agreed to purchase. The certificates for the Securities will be made available for examination and packaging by the Representatives not later than 10:00 A.M. on the last business day prior to the First Closing Time at the place set forth in the applicable Terms Agreement.

(c) If authorized by the applicable Terms Agreement, the Underwriters named therein may solicit offers to purchase Securities from the Company pursuant to delayed delivery contracts ("Delayed Delivery Contracts") substantially in the form of EXHIBIT B hereto, with such changes therein as the

Company may approve. As compensation for arranging Delayed Delivery Contracts, the Company will pay to the Representatives at the time payment is made pursuant to such Delayed Delivery Contracts or such other time specified in the applicable Terms Agreement, for the accounts of the Underwriters, the fee set forth in such Terms Agreement in respect of the principal amount of Senior Securities or Subordinated Securities or the number of Debt Warrants, as the case may be, for which Delayed Delivery Contracts are made. Any Delayed Delivery Contracts are to be with institutional investors of the types which will be set forth in the applicable Prospectus Supplement. At the applicable Closing Time, the Company will enter into Delayed Delivery Contracts (for not less than the minimum principal amount of Senior Securities or Subordinated Securities or minimum number of Debt Warrants, as the case may be, per Delayed Delivery Contract specified in the applicable Terms Agreement) with all purchasers proposed by the Underwriters and previously approved by the Company, as provided below, but not for an aggregate principal amount of Senior Securities or Subordinated Securities or aggregate number of Debt Warrants, as the case may be, in excess of that specified in the applicable Terms Agreement. The Underwriters will not have any responsibility for the validity or performance of Delayed Delivery Contracts.

The Representatives are to submit to the Company, at least three business days prior to the applicable Closing Time, the names of any institutional investors with which it is proposed that the Company will enter into Delayed Delivery Contracts and the principal amount of Senior Securities or Subordinated Securities or number of Debt Warrants, as the case may be, to be purchased by each of them, and the Company will advise the Representatives, at least two business days prior to the applicable Closing Time, of the names of the institutions with which the making of Delayed Delivery Contracts is approved by the Company and the principal amount of Senior Securities or Subordinated Securities or number of Debt Warrants, as the case may be, to be covered by each such Delayed Delivery Contract.

The principal amount of Senior Securities or Subordinated Securities or number of Debt Warrants agreed to be purchased by the respective Underwriters pursuant to the applicable Terms Agreement shall be reduced by the principal amount of Senior Securities or Subordinated Securities or number of Debt Warrants, as the case may be, covered by Delayed Delivery Contracts, as to each Underwriter as set forth

8

9

in a written notice delivered by the Representatives to the Company; provided, however, that the total principal amount of Senior Securities or Subordinated Securities or number of Debt Warrants to be purchased by all Underwriters shall be the total principal amount of Senior Securities or Subordinated Securities or number of Debt Warrants covered by the applicable Terms Agreement, less the principal amount of Senior Securities or Subordinated Securities or number of Debt Warrants, as the case may be, covered by Delayed Delivery Contracts.

(d) In addition, if the Underwriters are granted an option to purchase Optional Securities pursuant to the applicable Terms Agreement, upon written notice from the Representative or Representatives, on behalf of the Underwriters, given to the Company not more than 30 days subsequent to the date of the initial public offering of the Securities, the Underwriters may purchase all or less than all of the Optional Securities with respect to the offering of Securities to which such Terms Agreement relates in accordance with the terms and provisions set forth in the applicable Terms Agreement. Such notice shall be given (i) at least two business days prior to the exercise of such option if the Second Closing Time (as defined below) is simultaneous with the First Closing Time, or (ii) at least three business days, but no more than five business days, prior to the exercise of such option if the Second Closing Time is subsequent to the First Closing Time. If granted by the Company, such option may only be exercised by the Underwriters once in connection with each initial public offering of Securities. The Company agrees to sell to the Underwriters the principal amount or number of Optional Securities specified in such notice and the Underwriters agree, jointly and not severally, to purchase such Optional Securities. Such Optional Securities shall be purchased from the Company for the account of each Underwriter in the same proportion as the principal amount or number, as the case may be, of Securities set forth opposite such Underwriter's name in the applicable Terms Agreement bears to the total principal amount or number, as the case may be, of Securities covered by such Terms Agreement (subject to adjustment by you to round purchases) and may

be purchased by the Underwriters only for the purpose of covering over-allotments made in connection with the sale of such Securities. No Optional Securities shall be sold or delivered unless the related Securities previously have been, or simultaneously are, sold and delivered. The right to purchase the Optional Securities or any portion thereof may be surrendered and terminated at any time upon notice by the Representative or Representatives, on behalf of the Underwriters, to the Company.

Payment of the purchase price for, and delivery of certificates for, the Optional Securities shall be made at the place set forth in the applicable Terms Agreement or at such other place as shall be agreed upon by the Representatives and the Company (which may be the same as for the First Closing Time) but not later than seven business days after written notice of election to purchase Optional Securities is given (such time and date of payment and delivery being herein called the "Second Closing Time"). Payment shall be made to the Company by certified or official bank check or checks drawn in New York Clearing House funds or similar next day funds payable to the order of the Company, against delivery to the Representatives for the respective accounts of the Underwriters of certificates for the Optional Securities to be purchased by them. Certificates for the Optional Securities shall be in such denominations and registered in such names as the Representatives may request in writing at least two business days before the Second Closing Time. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Optional Securities which it has agreed to purchase. The certificates for the Optional Securities will be made available for examination and packaging by the Representatives not later than 10:00 A.M. on the last business day prior to the Second Closing Time at the place set forth in the applicable Terms Agreement.

SECTION 3. COVENANTS OF THE COMPANY. The Company covenants with each Underwriter as follows:

9

10

(a) From the date of the applicable Terms Agreement, and for so long as a Prospectus is required to be delivered in connection with the sale of Securities covered by such Terms Agreement, the Company will notify the Representatives, promptly, and confirm the notice in writing, (i) of the effectiveness of the Registration Statement and any amendment thereto (including any post-effective amendment), (ii) of the mailing or the delivery to the Commission for filing of any supplement to the Prospectus or any document to be filed pursuant to the 1934 Act which will be incorporated by reference into the Registration Statement or Prospectus, (iii) of the receipt of any comments from the Commission, (iv) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, and (v) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose. The Company will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment.

(b) Immediately following the execution of each Terms Agreement, the Company will prepare a Prospectus Supplement setting forth the principal amount of Senior Securities or Subordinated Securities and/or number of Debt Warrants, as the case may be, covered thereby and their terms not otherwise specified in the respective Indenture pursuant to which the Senior Securities or Subordinated Securities are being issued or Warrant Agreement pursuant to which the Debt Warrants are being issued, as the case may be, the names of the Underwriters and the principal amount of Senior Securities or Subordinated Securities or the number of Debt Warrants, as the case may be, which each severally has agreed to purchase, the names of the Representatives, the price at which the Securities are to be purchased by the Underwriters from the Company, the initial public offering price, the selling concession and reallowance, if any, any delayed delivery arrangements, and such other information as the Representatives and the Company deem appropriate in connection with the offering of the Securities. The Company will promptly transmit copies of the Prospectus Supplement to the Commission for filing in accordance with Rule 424(b).

(c) From the date of the applicable Terms Agreement, and for so long as a Prospectus is required to be delivered in connection with the sale of

the Securities covered by such Terms Agreement, the Company will give the Representatives notice of its intention to file or prepare any amendment to the Registration Statement (including any post-effective amendment) or any amendment or supplement to the Prospectus (including any revised Supplemental Prospectus which the Company proposes for use by the Underwriters in connection with the offering of such Securities which differs from the prospectus on file at the Commission, whether or not such revised prospectus is required to be filed pursuant to Rule 424(b) of the 1933 Act Regulations), whether pursuant to the 1933 Act, the 1934 Act or otherwise, will furnish the Representatives with copies of any such amendment or supplement or other documents a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file any such amendment or supplement or use any such prospectus to which the Representatives or counsel for the Underwriters shall reasonably object.

(d) The Company will deliver to the Representatives as many signed copies of the Registration Statement as originally filed and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and any documents incorporated or deemed to be incorporated by reference therein) as the Representatives may reasonably request and will also deliver to the Representatives a conformed copy of the Registration Statement as originally filed and of each amendment thereto (without exhibits) for each of the Underwriters. The Company will furnish to each Underwriter, from time to time during the period when the Prospectus is required to be delivered under the 1933 Act or the 1934 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter

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11

may reasonably request for the purposes contemplated by the 1933 Act or the 1934 Act with respect to the sale of any Securities covered by the applicable Terms Agreement.

(e) If, at any time when the Prospectus is required by the 1933 Act to be delivered in connection with sales of the Senior Securities or Subordinated Securities or Debt Warrants, any event shall occur or condition exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or counsel for the Company, to amend or supplement the Prospectus in order to make the Prospectus not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or if it shall be necessary, in the opinion of such counsel, at any such time to amend or supplement the Registration Statement or the Prospectus in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will forthwith prepare and file with the Commission such amendment or supplement, whether by filing documents pursuant to the 1934 Act or otherwise, so that, as so amended or supplemented, the Prospectus will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time it is delivered to a purchaser, not misleading or to make the Registration Statement comply with such requirements.

(f) The Company will endeavor, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions of the United States as the Representatives may designate; provided, however, that the Company shall not be obligated to qualify as a foreign corporation in any jurisdiction in which it is not so qualified. In each jurisdiction in which the Securities have been so qualified, the Company will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification in effect for a period of not less than one year from the effective date of the Registration Statement.

(g) With respect to each sale of Securities, the Company will make generally available to its security holders as soon as practicable, but not later than 90 days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Rule 158 of the 1933 Act Regulations) covering a twelve month period beginning, in each case, not later than the first day of the Company's fiscal quarter next following the "effective date" (as defined in said Rule 158) of the Registration Statement relating to such Securities.

(h) The Company, during the period when the Prospectus is required



to be delivered under the 1933 Act or the 1934 Act, will file all documents required to be filed with the Commission pursuant to Section 13, 14 or 15 of the 1934 Act within the time periods required by the 1934 Act and the 1934 Act Regulations.

(i) Between the date of any Terms Agreement with respect to the offer and sale of Debt Securities and the termination of any trading restrictions or the First or Second Closing Time, whichever is later, with respect to the Debt Securities covered thereby, except for the issuance of Debt Securities upon the exercise of Debt Warrants, if any, the Company will not, without the prior consent of the Representatives, directly or indirectly, sell, offer to sell, or enter into any agreement to offer or sell, any debt securities of the Company with a maturity of more than one year, including additional Debt Securities.

(j) Between the date of any Terms Agreement with respect to Convertible Subordinated Securities and the 60th day after such date, the Company will not offer, sell, contract to sell or otherwise dispose of any shares of Common Stock, or any security convertible into or exchangeable or exercisable for shares of its Common Stock, without the prior consent of the Representatives (except for Common Stock issued or issuable pursuant to reservations or agreements, pursuant to any employee stock

11

12

plan, stock ownership plan or dividend reinvestment plan, or pursuant to any conversion of previously issued securities of the Company).

SECTION 4. PAYMENT OF EXPENSES. The Company will pay all expenses incident to the performance of its obligations under this Agreement and each Terms Agreement, including (i) the printing and filing of the Registration Statement as originally filed and of each amendment thereto, (ii) the preparation, issuance and delivery of the certificates for the Securities to the Underwriters, (iii) the fees and disbursements of the Company's counsel and accountants, (iv) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of any Blue Sky Survey and any Legal Investment Survey, (v) the printing and delivery to the Underwriters of copies of the Registration Statement as originally filed and of each amendment thereto, of each preliminary prospectus, and of the Prospectus and any amendments or supplements thereto, (vi) the printing and delivery to the Underwriters of copies of the respective Indentures and Warrant Agreement and any Blue Sky Survey and any Legal Investment Survey, (vii) the fees and expenses, if any, incurred in connection with the listing of the Securities on any securities exchange, (viii) the fees and expenses of the Trustees and Warrant Agent, if any, and (ix) any fees payable in connection with the rating of the Debt Securities.

If this Agreement or any Terms Agreement is terminated by the Representatives in accordance with the provisions of Section 5 or Section 9(a)(i) hereof, the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters in connection with the offer and sale of Securities covered by such Terms Agreement.

SECTION 5. CONDITIONS OF UNDERWRITERS' OBLIGATIONS. The obligations of the Underwriters to purchase the Firm Securities at the First Closing Time and (if applicable, pursuant to the terms of the applicable Terms Agreement) the Optional Securities at the Second Closing Time pursuant to any Terms Agreement are subject to the accuracy of the representations and warranties of the Company herein contained, to the accuracy of the statements of the Company's officers made in any certificate furnished pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder, and to the following further conditions:

(a) At the applicable Closing Time (i) no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act or proceedings therefor initiated or threatened by the Commission, (ii) the rating assigned by any nationally recognized securities rating agency to any debt securities or preferred stock of the Company as of the date of the applicable Terms Agreement shall not have been lowered since the execution of such Terms Agreement and (iii) there shall not have come to the attention of



the Representatives any facts that would cause them reasonably to believe that the Prospectus, together with the applicable Prospectus Supplement, at the time it was required to be delivered to a purchaser of the Securities, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at such time, not misleading.

(b) At the applicable Closing Time the Representatives shall have received:

(1) The favorable opinion, dated as of the applicable Closing Time, of Testa, Hurwitz & Thibault, counsel for the Company, in form and substance satisfactory to counsel for the Representatives, to the effect that:

12

13

(i) The Company has been duly incorporated and is validly existing as a corporation in good corporate standing under the laws of the Commonwealth of Massachusetts.

(ii) The Company has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and to enter into and perform its obligations under this Agreement and the Terms Agreement.

(iii) Based solely on the opinion of local counsel to the Company or the general counsel of the Company, each Significant Subsidiary of the Company specified in the opinion based on a certificate furnished by the Company, and has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement; all of the issued and outstanding capital stock of each Significant Subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and, to the best of such counsel's knowledge and information, is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity.

(iv) This Agreement, the applicable Terms Agreement and the Delayed Delivery Contracts, if any, have each been duly authorized, executed and delivered by the Company.

(v) If applicable, the applicable Indenture has been duly authorized, executed and delivered by the Company and (assuming the due authorization, execution and delivery thereof by the applicable Trustee) constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles.

(vi) If applicable, the Debt Securities covered by the applicable Terms Agreement are in the form contemplated by the applicable Indenture, have been duly authorized by the Company and, when executed by the Company and authenticated by the respective Trustee in the manner provided in such Indenture (assuming the due authorization, execution and delivery of such Indenture by such Trustee) and delivered against payment of the purchase price therefor specified in the applicable Terms Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles, and will be entitled to the benefits of such Indenture.

(vii) If applicable, the Convertible Subordinated Securities are convertible into Common Stock of the Company in accordance with the terms of the Subordinated Indenture; the shares of such Common Stock initially issuable

13

14

upon conversion of such Convertible Subordinated Securities have been duly authorized and reserved for issuance by the Company upon such conversion and, when issued upon such conversion, will be validly issued, fully paid and nonassessable and will conform, in all material respects, to the description thereof contained in the Prospectus; the Company has authorized capital stock as set forth in the Prospectus; and, to the best of such counsel's knowledge, the shareholders of the Company have no preemptive rights with respect to such Common Stock. No further approval or authority of the stockholders or the Board of Directors of the Company will be required for the issuance of Common Stock upon exercise of the Convertible Subordinated Securities.

(viii) If applicable, the Warrant Agreement has been duly authorized, executed and delivered by the Company and (assuming the authorization, execution and delivery thereof by the Warrant Agent) constitutes a valid and legally binding agreement of the Company enforceable in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally and general principles of equity.

(ix) If applicable, the Debt Warrants covered by the applicable Terms Agreement are in the form contemplated by the Warrant Agreement, have been duly authorized by the Company and, when executed by the Company and authenticated by the Warrant Agent in the manner provided in the Warrant Agreement (assuming the due authorization, execution and delivery of the Warrant Agreement by the Warrant Agent) and delivered against payment of the purchase price therefor specified in the applicable Terms Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general principles of equity, and will be entitled to the benefits of the Warrant Agreement.

(x) If applicable, the Warrant Securities issuable upon exercise of the Debt Warrants are duly and validly authorized, have been duly reserved for issuance upon exercise of the Debt Warrants, and, when issued upon the exercise of the Debt Warrants in accordance with the terms of the Warrant Agreement, following due execution by the Company and authentication and delivery by the applicable Trustee in the manner provided in the applicable Indenture, will constitute valid and binding obligations of the Company enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally and by general equitable principles and will be entitled to the benefits of the applicable Indenture. No further approval or authority of the stockholders or the Board of Directors of the Company will be required for the issuance of the Warrant Securities upon exercise of the Debt Warrants.

(xi) The Registration Statement is effective under the 1933 Act and, to the best of such counsel's knowledge and information, no stop order

suspending the effectiveness of the Registration Statement has been issued under the 1933 Act or proceedings therefor initiated or threatened by the Commission.

(xii) The Registration Statement (other than the financial statements, supporting schedules and other financial and statistical information included or incorporated by reference therein, as to which no opinion need be rendered) complies as to form in all material respects with the requirements of the 1933 Act, the 1939 Act and the 1933 Act Regulations.

(xiii) The applicable Indenture has been qualified under the 1939 Act.

(xiv) The applicable Indenture and the Debt Securities and/or the Debt Warrants and the Warrant Agreements covered by the applicable Terms Agreement conform in all material respects to the descriptions thereof contained in the Prospectus and the applicable Prospectus Supplement.

(xv) To the best of such counsel's knowledge and information, there are no legal or governmental proceedings pending or threatened which are required to be disclosed in the Registration Statement, other than those disclosed therein.

(xvi) The information in the Prospectus under "Description of Debt Securities," and "Description of Warrants" to the extent that it constitutes matters of law, summaries of legal matters, documents or proceedings, or legal conclusions, has been reviewed by such counsel and is correct in all material respects.

(xvii) To the best of such counsel's knowledge and information, there are no contracts, indentures, mortgages, loan agreements, notes, leases or other instruments required to be filed as exhibits to the Registration Statement other than those filed or incorporated by reference as exhibits thereto.

(xviii) No authorization, approval, consent or order of any court or governmental authority or agency is required in connection with the offering, issuance or sale of the Securities covered by the applicable Terms Agreement to the Underwriters, except such as may be required under the 1933 Act or the 1933 Act Regulations or state securities law and the qualification of the applicable Indenture under the 1939 Act; and, to the best of such counsel's knowledge and information, the execution, delivery and performance of this Agreement, the applicable Terms Agreement, the applicable Indenture, the Warrant Agreement and the Securities, the consummation of the transactions contemplated herein and therein and compliance by the Company with its obligations hereunder and thereunder will not conflict with or constitute a breach of, or default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to, any contract, indenture, mortgage, loan agreement, note, lease or other instrument known to such counsel to which the Company is a party or by which it may be bound, or to which any of the property or assets of the Company is subject, nor will such action result in any violation of the provisions of the charter or by-laws of the Company, or any applicable law, administrative regulation or administrative or court decree (except

that no opinion need be expressed as to federal and state securities laws, except as otherwise explicitly set forth elsewhere in such opinion).

(xix) Each document filed pursuant to the 1934 Act (other than the financial statements, supporting schedules and other financial and statistical information included or incorporated by reference therein, as to which no opinion need be rendered) and incorporated or deemed to be incorporated by reference in the Prospectus complied when so filed as to form in all material respects with the 1934 Act and the 1934 Act Regulations.

(xx) If the applicable Terms Agreement relates to Exchangeable Subordinated Securities, such Terms Agreement may require that additional opinions be rendered by Testa, Hurwitz & Thibault relating to Exchange Securities.

(xxi) The applicable Terms Agreement may state that in specified instances Testa, Hurwitz & Thibault may rely on the opinion of local counsel to the Company or the general counsel of the Company when giving an opinion required pursuant to this Agreement or such Terms Agreement.

(2) The favorable opinion, dated as of the applicable Closing Time, of Goodwin, Procter & Hoar, counsel for the Underwriters, with respect to the matters set forth in (iv), (v), (vi), (ix), (x) (xii), (xiii), (xiv) and (xv) inclusive, of subsection (b)(1) of this Section 5.

(3) In giving their opinions required by subsections (b)(1) and (b)(2), respectively, of this Section, Testa, Hurwitz & Thibault and Goodwin, Procter & Hoar shall each additionally state substantially to the following effect: that nothing has come to their attention that would lead them to believe that the Registration Statement (except for financial statements and schedules and other financial or statistical data included or incorporated by reference therein and that part of the Registration Statement which constitutes the applicable Trustee's Statement of Eligibility and Qualification under the 1939 Act (Form T-1), as to which counsel need make no statement), at the time it became effective or if an amendment to the Registration Statement or an annual report on Form 10-K has been filed by the Company with the Commission subsequent to the effectiveness of the Registration Statement, then at the time of the most recent such filing, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the Prospectus as amended or supplemented at the date of the applicable Terms Agreement (except for financial statements and schedules and other financial or statistical data included or incorporated by reference therein, as to which counsel need make no statement) (unless the term "Prospectus" refers to a prospectus which has been provided to the Underwriters by the Company for use in connection with the offering of the Securities covered by the applicable Terms Agreement which differs from the Prospectus on file at the Commission at the time the Registration Statement becomes effective, in which case at the time it is first provided to the Underwriters for such use) or at the First Closing Time or (if applicable) the Second Closing Time, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

16

17

(c) At the applicable Closing Time there shall not have been, since the date of the applicable Terms Agreement or since the respective dates as of which information is given in the Registration Statement and the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, and the Representatives shall have received a certificate of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company, dated as of such Closing Time, to the effect that (i) there has been no such material adverse change, (ii) the representations and warranties in Section 1 hereof are true and correct with the same force and effect as though expressly made at and as of the applicable Closing Time, (iii) the Company has complied with all

agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the applicable Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been initiated or, to the best of their knowledge, threatened by the Commission.

(d) At the time of the execution of the applicable Terms Agreement, the Representatives shall have received from Coopers & Lybrand a letter dated such date, in form and substance satisfactory to the Representatives, to the effect that (i) they are independent public accountants with respect to the Company within the meaning of the 1933 Act and the 1933 Act Regulations, (ii) it is their opinion that the financial statements and financial statement schedules included in or incorporated by reference in the Registration Statement and covered by their opinions therein comply as to form in all material respects with the applicable accounting requirements of the 1933 Act and the 1933 Act Regulations, (iii) based upon limited procedures set forth in detail in such letter, nothing has come to their attention which causes them to believe that at a specified date not more than five days prior to the date of the applicable Terms Agreement, there has been any change in the capital stock of the Company or any increase in the consolidated long term debt of the Company and its subsidiaries or any decrease in consolidated net current assets or net assets as compared with the amounts shown in the Company's latest audited balance sheet or, during the period from the date of such balance sheet to a specified date not more than five days prior to the date of this Agreement, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated revenues, net income/(loss) or net income/(loss) per share of the Company and its subsidiaries, except in all instances for changes, increases or decreases which the Registration Statement and the Prospectus disclose have occurred or may occur, and (iv) in addition to the examination referred to in their opinions and the limited procedures referred to in clause (iii) above, they have carried out certain specified procedures, not constituting an audit, with respect to certain amounts, percentages and financial information which are included in the Registration Statement and Prospectus and which are specified by the Representatives, and have found such amounts, percentages and financial information to be in agreement with the relevant accounting, financial and other records of the Company and its subsidiaries identified in such letter.

(e) At the applicable Closing Time, the Representatives shall have received from Coopers & Lybrand a letter, dated as of such Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (d) of this Section 5, except that the specified date referred to shall be a date not more than five days prior to such Closing Time and, if the Company has elected to rely on Rule 430A of the 1933 Act Regulations, to the further effect that they have carried out procedures as specified in clause (iv) of subsection (d) of this Section with respect to certain amounts, percentages and financial information specified by the Representatives and deemed to be a part of the Registration Statement pursuant to Rule 430(A) (b) and have found such amounts, percentages and financial information to be in agreement with the records specified in such clause (iv).

(f) At the applicable Closing Time, counsel for the Underwriters shall have been furnished with such documents and opinions as they may require for the purpose of enabling them to pass

17

18

upon the issuance and sale of the Securities as herein contemplated and related proceedings, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as contemplated in the applicable Terms Agreement shall be satisfactory in form and substance to the Representatives and counsel for the Underwriters.

If any condition specified in this Section 5 shall not have been fulfilled when and as required to be fulfilled, the applicable Terms Agreement may be terminated by the Representatives by notice to the Company at any time at or prior to the applicable Closing Time, and such termination shall be without liability of any party to any other party except as provided in Section 4 hereof.

(a) The Company agrees to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the information deemed to be part of the Registration Statement pursuant to Rule 430A(b) of the 1933 Act Regulations, if applicable, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, if such settlement is effected with the written consent of the Company; and

(iii) against any and all expense whatsoever, as incurred (including, subject to Section 6(c) hereof, the fees and disbursements of counsel chosen by the Representatives), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

PROVIDED, HOWEVER, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made (1) in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use in the Registration Statement (or any amendment thereto) or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) or (2) in that part of the Registration Statement which constitutes any Trustee's Statement of Eligibility and Qualification under the 1939 Act (Form T-1). The foregoing indemnity agreement is in

addition to any liability which the Company may otherwise have to any Underwriter or control person of that Underwriter.

(b) Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto) or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives expressly for use in the Registration Statement (or any amendment thereto) or such preliminary prospectus or the Prospectus (or any amendment or supplement thereto). The foregoing indemnity agreement is in addition to any liability which any Underwriter may otherwise have to the Company or any control person of the Company.

(c) Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability which it may have otherwise than on account of this indemnity agreement. An indemnifying party may participate at its own expense in the defense of any such action. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances.

SECTION 7. CONTRIBUTION. In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 6 hereof is for any reason held to be unenforceable by the indemnified parties although applicable in accordance with its terms, the indemnifying party shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by said indemnity agreement incurred by the indemnified party or parties, as incurred, in such proportion that (i) if the Underwriters are the indemnifying party, the portion thereof contributed by the Underwriters equals the percentage of the initial public offering price appearing on the cover page of the Prospectus represented by the underwriting discount and commissions appearing thereon and (ii) if the Company is the indemnifying party, the portion thereof contributed by the Company equals the percentage of the initial public offering price appearing on the cover page of the Prospectus represented by the net proceeds to the Company (before deducting expenses) appearing thereon; provided, however, that no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act shall have the same rights to contribution as the Company. The Underwriters' obligations to contribute under this Section 7 are several and not joint. No Underwriter shall be required to contribute any amount in excess of the amount by which the total price of the Securities purchased by such Underwriter pursuant to the applicable Terms Agreement exceeds the amount of any damages which such Underwriter has otherwise paid or become liable to pay by reason of any untrue or alleged untrue statement or omission or alleged omission.

19

20

SECTION 8. REPRESENTATIONS, WARRANTIES AND AGREEMENTS TO SURVIVE DELIVERY. All representations, warranties and agreements contained in this Agreement and the applicable Terms Agreement, or contained in certificates of officers of the Company submitted pursuant hereto, shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or controlling person, or by or on behalf of the Company, and shall survive delivery of the Securities to the Underwriters.

SECTION 9. TERMINATION OF AGREEMENT.

(a) The Representatives may terminate the applicable Terms Agreement (including this Agreement, as incorporated by reference therein), by notice to the Company, at any time at or prior to the applicable Closing Time (i) if there has been, since the date of such Terms Agreement or since the respective dates as of which information is given in the Registration Statement, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or elsewhere or any outbreak of hostilities or escalation thereof or other calamity or crisis the effect of which is such as to make it, in the judgment of the Representatives, impracticable to market the Securities covered by such Terms Agreement or to enforce contracts for the sale of such Securities, or (iii) if trading in the Common Stock has been suspended by the Commission, or



if trading generally on either the American Stock Exchange or the New York Stock Exchange has been suspended, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices for securities have been required, by either of said Exchanges or by order of the Commission or any other governmental authority, or if a banking moratorium has been declared by either Federal, New York or Massachusetts authorities.

(b) If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof. Notwithstanding any such termination, (x) the covenants set forth in Section 3 with respect to any offering of Securities purchased from the Company and (y) the provisions of Section 4, the indemnity agreement set forth in Section 6, the contribution provisions set forth in Section 7, and the provisions of Sections 8 and 13 shall remain in effect.

SECTION 10. DEFAULT BY ONE OR MORE OF THE UNDERWRITERS. If one or more of the Underwriters shall fail at the First Closing Time or (if applicable) the Second Closing Time to purchase the Securities which it or they are obligated to purchase under the applicable Terms Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(a) if the aggregate principal amount or number (as the case may be) of Defaulted Securities does not exceed 10% of the aggregate principal amount or number (as the case may be) of the Securities to be purchased pursuant to such Terms Agreement at such Closing Time, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount or number thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations under the applicable Terms Agreement of all non-defaulting Underwriters, or

(b) if the aggregate principal amount or number (as the case may be) of Defaulted Securities exceeds 10% of the aggregate principal amount or number (as the case may be) of the Securities

20

21

to be purchased pursuant to such Terms Agreement at such Closing Time, such Terms Agreement shall terminate with respect to such Securities without liability on the part of any non-defaulting Underwriter or the Company.

No action taken pursuant to this Section 10 shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of the applicable Terms Agreement, either the Representatives or the Company shall have the right to postpone the applicable Closing Time for a period not exceeding seven days in order to effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements.

SECTION 11. NOTICES. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to the Representatives as provided in the applicable Terms Agreement. Notices to the Company shall be directed to it at 111 Powdermill Road, Maynard, Massachusetts 01754-1418, attention of Ilene B. Jacobs, Vice President and Treasurer (MS02-2/F23), with a copy to Gail S. Mann, Esq., Assistant General Counsel, Secretary and Clerk (MS02-3/F13).

SECTION 12. PARTIES. The applicable Terms Agreement and this Agreement shall each inure to the benefit of and be binding upon the Underwriters and the Company and their respective successors. Nothing expressed or mentioned in the applicable Terms Agreement or this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters and the Company and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7

and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of such Terms Agreement or this Agreement or any provision herein or therein contained. Such Terms Agreement and this Agreement and all conditions and provisions hereof and thereof are intended to be for the sole and exclusive benefit of the Underwriters and the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 13. GOVERNING LAW AND TIME. This Agreement and the Terms Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed in said State. Specified times of day refer to New York City time.

21

22

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 between the Underwriters and the Company in accordance with its terms.

Very truly yours,

DIGITAL EQUIPMENT CORPORATION

By \_\_\_\_\_  
Name:  
Title:

22

23

EXHIBIT A

DIGITAL EQUIPMENT CORPORATION  
(a Massachusetts corporation)

[Title of Securities]

TERMS AGREEMENT  
-----

Dated: \_\_\_\_\_, 199\_

To: Digital Equipment Corporation  
146 Main Street  
Maynard, MA 01754

Attention:

Dear Sirs:

We (the "Representative") understand that Digital Equipment Corporation, a Massachusetts corporation (the "Company"), proposes to issue and sell [\$ \_\_\_\_\_ aggregate principal amount of its] [Title of Debt Securities (the "Debt Securities")] [and] [\_\_\_\_\_ Warrants (the "Debt Warrants")] to purchase an aggregate of \$ \_\_\_\_\_ principal amount of [Title of Warrant Securities (the "Warrant Securities")] [(such Debt Securities and Debt Warrants being collectively hereinafter referred to as] the "Underwritten Securities"). Subject to the terms and conditions set forth herein or incorporated by reference herein, (the "Underwriter[s]") hereby offer[s] to purchase, severally and not jointly, the respective [amounts] [and] [number] of

[Debt Securities] [and] [Debt Warrants] set forth below opposite their respective names at the [respective] purchase price[s] set forth below.

The [Debt Securities] [and] [Debt Warrants] to be purchased by the Underwriter[s], which are to be issued under [an Indenture dated as of \_\_\_\_\_, 1994 between the Company and \_\_\_\_\_, as Trustee, as supplemented by Supplemental Indenture dated as of \_\_\_\_\_, 19\_\_\_\_ between the Company and the Trustee] [and] [a Warrant Agreement dated as of \_\_\_\_\_, 1994 between the Company and \_\_\_\_\_, as Warrant Agent] shall have the following terms:

[Debt Securities]

[Title of Debt Securities: \_\_\_\_\_]

Currency: \_\_\_\_\_

Principal Amount to be issued: \$ \_\_\_\_\_

Date of maturity: \_\_\_\_\_

Interest rate or formula: \_\_\_\_%

Interest payment dates: \_\_\_\_\_ and \_\_\_\_\_ of each year

23

24

Public offering price: \_\_\_\_% [plus accrued interest from \_\_\_\_\_]

Purchase price: \_\_\_\_% (payable in next-day funds)

Redemption provisions: \_\_\_\_\_

Sinking fund requirements: \_\_\_\_\_

Conversion provisions: \_\_\_\_\_

Exchange Provisions: \_\_\_\_\_

[Delayed Delivery Contracts: [authorized] [not authorized]

[Date of delivery: \_\_\_\_\_]

Minimum contract: \_\_\_\_\_

Maximum aggregate principal amount: \_\_\_\_\_

Fee: \_\_\_\_%]

Closing date and location: \_\_\_\_\_

Additional co-manager: \_\_\_\_\_

Additional underwriters: \_\_\_\_\_

Current ratings: Moody's Investors Service, Inc. \_\_\_\_\_

Standard & Poor's Corporation \_\_\_\_\_

\_\_\_\_\_]

[Debt Warrants]

[Number of Debt Warrants to be issued: \_\_\_\_\_]

Warrant Agent: \_\_\_\_\_

Issuable jointly with Debt Securities: [Yes] [No]

[Number of Debt Warrants issued with each

\$ \_\_\_\_\_ principal amount of Debt Securities:]

[Detachable data:]

Date from which Debt Warrants are exercisable: \_\_\_\_\_

Date on which Debt Warrants expire: \_\_\_\_\_

Exercise price(s) of Debt Warrants: \_\_\_\_\_

Initial public offering price: \$ \_\_\_\_\_

Purchase price: \$ \_\_\_\_\_

Title of Warrant Securities: \_\_\_\_\_ Principal amount  
 purchasable upon exercise of one Debt Warrant: \_\_\_\_\_  
 Interest rate: \_\_\_\_\_ Payable: \_\_\_\_\_ Date  
 of maturity: \_\_\_\_\_ Redemption provisions:  
 \_\_\_\_\_ Sinking fund requirements: \_\_\_\_\_  
 Conversion provisions: \_\_\_\_\_ Exchange  
 provisions: \_\_\_\_\_

[Delayed Delivery Contracts: [authorized] [not authorized]  
 [Date of delivery: \_\_\_\_\_  
 Minimum contract: \_\_\_\_\_  
 Maximum aggregate principal amount: \_\_\_\_\_  
 Fee: \_\_\_\_\_%]

Other terms: \_\_\_\_\_

Closing date and location: \_\_\_\_\_

Additional co-manager: \_\_\_\_\_

Additional underwriters: \_\_\_\_\_

<TABLE>

All of the provisions contained in the document entitled "Digital Equipment Corporation Debt Securities and Warrants to Purchase Debt Securities, Underwriting Agreement - Basic Provisions," dated as of January \_\_, 1994, a copy of which is attached hereto as Annex A, are herein incorporated by reference in their entirety and shall be deemed to be a part of this Terms Agreement to the same extent as if such provisions had been set forth in full herein. Terms defined in such document are used herein as therein defined. The Underwriter[s] agree[s], subject to the terms and provisions of this Terms Agreement, including the terms and provisions incorporated by reference herein, to purchase from the Company the following aggregate [principal amount] [and] [number] of [Debt Securities] [and] [Debt Warrants].

<CAPTION>

Name of Underwriter	Title of Debt Securities	Aggregate Principal Amount to be Purchased	Number of Debt Warrants to be Purchased	Title of Debt Securities Issuable Upon Exercise of Debt Warrants	Aggregate Purchase Price
<S>	<C>	<C>	<C>	<C>	<C>

</TABLE>

Any notice by the Company to the Underwriter[s] pursuant to this Terms Agreement shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication addressed to: \_\_\_\_\_.

Please accept this offer by signing a copy of this terms Agreement in the space set forth below and returning the signed copy to us.

\_\_\_\_\_  
 [Name of Underwriter]

By: \_\_\_\_\_  
Name:  
Title:

Accepted as of the date  
first above written:

DIGITAL EQUIPMENT CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT B

DIGITAL EQUIPMENT CORPORATION

[Title of Securities]

DELAYED DELIVERY CONTRACT  
-----

Dated: \_\_\_\_\_, 19\_\_

Digital Equipment Corporation  
c/o [Name and address of Representatives]

Attention:

Dear Sirs:

The undersigned hereby agrees to purchase from Digital Equipment Corporation (the "Company"), and the Company agrees to sell to the undersigned on \_\_\_\_\_, 19\_\_ (the "Delivery Date"), [\$ \_\_\_\_\_ principal amount] [number] of the Company's [insert title of security] (the "Securities"), offered by the Company's Prospectus dated \_\_\_\_\_, 199\_\_, as supplemented by its Prospectus Supplement dated \_\_\_\_\_, 19\_\_, receipt of which is hereby acknowledged, at a purchase price of [ \_\_\_\_\_ % the principal amount thereof, [plus accrued interest from \_\_\_\_\_, 19\_\_ [and \$ \_\_\_\_\_ per Debt Warrant, respectively] to the Delivery Date,]] and on the further terms and conditions set forth in this contract.

Payment for the Securities which the undersigned has agreed to purchase on the Delivery Date shall be made to the Company or its order by certified or official bank check in New York Clearing House funds, at the office of [name and address of Representatives], on the Delivery Date, upon delivery to the undersigned of the Securities to be purchased by the undersigned in definitive form and in such denominations and registered in such names as the undersigned may designate by written or telegraphic communication addressed to the Company not less than five full business days prior to the Delivery Date.

The obligation of the undersigned to take delivery of and make payment for Securities on the Delivery Date shall be subject only to the conditions that (1) the purchase of Securities to be made by the undersigned shall not on the Delivery Date be prohibited under the laws of the jurisdiction to which the undersigned is subject and (2) the Company, on or before \_\_\_\_\_, 19\_\_, shall have sold to the Underwriters of the Securities (the "Underwriters") such principal amount of the Securities as is to be sold to them pursuant to the Terms Agreement dated \_\_\_\_\_, 19\_\_ between the Company and the Underwriters. The obligation of the undersigned to take delivery of and make payment for Securities shall not be affected by the failure of any purchaser to take delivery of and make payment for Securities pursuant to other contracts similar to this contract. The undersigned represents and warrants to you that

its investment in the Securities is not, as of the date hereof, prohibited under the laws of any jurisdiction to which the undersigned is subject and which govern such investment.

Promptly after completion of the sale to the Underwriters, the Company will mail or deliver to the undersigned at its address set forth below notice to such effect, accompanied by a copy of the opinion of counsel for the Company delivered to the Underwriters in connection therewith.

By the execution hereof, the undersigned represents and warrants to the Company that all necessary corporate action for the due execution and delivery of this contract and the payment for and

purchase of the Securities has been taken by it and no further authorization or approval of any governmental or other regulatory authority is required for such execution, delivery, payment or purchase, and that, upon acceptance hereof by the Company and mailing or delivery of a copy as provided below, this contract will constitute a valid and binding agreement of the undersigned in accordance with its terms.

This contract will inure to the benefit of and be binding upon the parties hereto and their respective successors, but will not be assignable by either party hereto without the written consent of the other.

It is understood that the Company will not accept Delayed Delivery Contracts for an aggregate [principal amount] [number] of Securities in excess of [\$] and that the acceptance of any Delayed Delivery Contract is in the Company's sole discretion and, without limiting the foregoing, need not be on a first-come, first-served basis. If this contract is acceptable to the Company, it is requested that the Company sign the form of acceptance on a copy hereof and mail or deliver a signed copy hereof to the undersigned at its address set forth below. This will become a binding contract between the Company and the undersigned when such copy is so mailed or delivered.

This Agreement shall be governed by the laws of the State of New York.

Yours very truly,

\_\_\_\_\_  
[Name of Purchaser]

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
[Address]

Accepted as of the date  
first above written

DIGITAL EQUIPMENT CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

<TABLE>

The name and telephone number of the representative of the Purchaser with whom details of delivery on the Delivery Date may be discussed is as follows: (Please print.)

<CAPTION>

Name	Telephone No. (Including Area Code)
<S>	<C>

</TABLE>

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DIGITAL EQUIPMENT CORPORATION  
(a Massachusetts corporation)

Preferred Shares, Depositary Shares and Warrants to Purchase Equity Securities

UNDERWRITING AGREEMENT - BASIC PROVISIONS  
-----

\_\_\_\_\_, 1994

To: The Underwriters named in  
the within-mentioned Terms  
Agreement

Dear Sirs:

Digital Equipment Corporation (the "Company") proposes to issue and sell from time to time, together or separately, any or a combination of the following securities: shares of preferred stock of the Company, par value \$1.00 per share (the "Preferred Shares"), in one or more series; depositary shares representing ownership of and entitlement to all rights and preferences of a fraction of a Preferred Share of a specified series (the "Depositary Shares"); and/or warrants to acquire equity securities of or owned by the Company (the "Warrants"); in one or more offerings on terms determined at the time of sale. Preferred Shares that are to be represented by each series of Depositary Shares will be deposited with a depositary (the "Depositary") under a deposit agreement (the "Deposit Agreement") among the Company, the Depositary and the holders of certificates evidencing the Depositary Shares. Each series of Warrants will be issued under a separate warrant agreement (the warrant agreement relating to any issue of Warrants to be sold pursuant to this Agreement will be identified in the applicable Terms Agreement (as hereinafter defined) and is referred to herein as the "Warrant Agreement") to be entered into between the Company and a warrant agent identified in such Warrant Agreement (the "Warrant Agent"), all as set forth in the applicable Prospectus Supplement (as hereinafter defined). Each issue of Preferred Shares may vary as to the specific number of shares, title, stated value and liquidation preference, issuance price, ranking, dividend rate or rates (or method of calculation), dividend payment dates, any redemption or sinking fund requirements, any voting rights, any conversion provision and any other variable terms as set forth in the applicable certificate of designation (each, a "Certificate of Designation") relating to such Preferred Shares. Each issue of Warrants may vary as to issuance price, securities for which such Warrants are exercisable (any such securities issuable upon exercise of Warrants being referred to herein as "Warrant Securities"), termination date, exercise price, redemption provisions and other variable terms which the Warrant Agreement contemplates may be set forth in the Warrants as issued from time to time. The Preferred Shares, Depositary Shares and Warrants that may be purchased by the

Underwriters (as hereinafter defined) under this Agreement, are hereinafter collectively referred to as the "Firm Securities." In certain cases, the applicable Terms Agreement (as defined below) may provide that the Company grants to the Underwriters the option to purchase additional Preferred Shares, Depositary Shares and/or Warrants to cover over-allotments (the "Optional Securities"); if and to the extent that the right to purchase such Optional Securities is granted as herein described, the terms and conditions of any such option will be described in the applicable Prospectus Supplement and Terms Agreement (each as hereinafter defined). The Firm Securities and the Optional Securities are herein collectively referred to as the "Securities."

Whenever the Company determines to make an offering of Securities, it will enter into an agreement substantially in the form of Exhibit A hereto (the "Terms Agreement") providing for the sale of such Securities to, and the purchase and offering thereof by, the underwriter or underwriters named

2

therein (the "Underwriters" or "you," which terms shall include the underwriter or underwriters named therein whether acting alone in the sale of Securities or as members of an underwriting syndicate). The Terms Agreement relating to each offering of Securities shall specify the name or names of the Underwriters participating in such offering (subject to substitution as provided in Section 10 hereof) and the number of Securities which each severally agrees to purchase, the amount or number of Securities to be issued and their terms not otherwise specified in the Certificate of Designation, the Depositary Agreement or the Warrant Agreement, as the case may be, (including, in the case of Depositary Shares, the applicable fraction of a Preferred Share represented thereby), whether the Underwriters have an option to purchase Optional Securities, the name or names of the Underwriters acting as manager or co-managers in connection with such offerings, if any (the "Representatives," which term shall include each Underwriter in the event that there shall be no manager or co-managers), the price at which the Securities are to be purchased by the Underwriters from the Company, the initial public offering price, any delayed delivery arrangements and the time and place of delivery and payment. Each offering of Securities will be governed by this Agreement, as supplemented by the applicable Terms Agreement, and this Agreement and such Terms Agreement shall inure to the benefit of and be binding upon each Underwriter participating in the offering of such Securities.

The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (No. 33-\_\_\_\_) relating to the Securities and, if required, the Warrant Securities issuable upon exercise of Warrants, and the offering thereof from time to time in accordance with Rule 415 under the Securities Act of 1933 (the "1933 Act") and has filed such amendments thereto, if any, as may have been required to the date hereof, and will file such additional amendments thereto and such amended prospectuses as may hereafter be required. Such registration statement (as amended, if applicable) and the prospectus constituting a part thereof, as from time to time amended or supplemented pursuant to the 1933 Act, the Securities and Exchange Act of 1934, as amended (the "1934 Act"), or otherwise, are hereinafter referred to as the "Registration Statement" and the "Prospectus", respectively; provided, however, that a supplement of the Prospectus contemplated by Section 3(a) hereof (a "Prospectus Supplement") shall be deemed to have supplemented the Prospectus only with respect to the offering of Securities to which it relates. If any revised prospectus shall be provided to

the Underwriters by the Company for use in connection with the offering of the Securities which differs from the Prospectus on file at the Commission (whether or not such revised prospectus is required to be filed by the Company pursuant to Rule 424(b) of the 1933 Act Regulations), the term "Prospectus" shall refer to such revised prospectus from and after the time it is first provided to the Underwriters for such use. All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include the filing of any document under the 1934 Act which is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

SECTION 1. REPRESENTATIONS AND WARRANTIES.

(a) The Company represents and warrants to each Underwriter, as of the date of the applicable Terms Agreement and as of the First Closing Time and Second Closing Time (as defined in Section 2 hereof), in each case, the "Representation Date") as follows:

(i) At the time the Registration Statement becomes effective and as of the applicable Representation Date, the Registration Statement will comply in all material respects with the requirements of the 1933 Act and the rules and regulations of the Commission under the

3

1933 Act (the "1933 Act Regulations"). The Registration Statement, at the time the Registration Statement becomes effective (or, if an amendment to the Registration Statement or an annual report on Form 10-K has been filed by the Company with the Commission subsequent to the effectiveness of the Registration Statement, then at the time of the most recent such filing) will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Prospectus, at the time the Registration Statement becomes effective and at the applicable Representation Date (unless the term "Prospectus" refers to a prospectus which has been provided to the Underwriters by the Company for use in connection with the offering of the Securities which differs from the Prospectus on file at the Commission at the time the Registration Statement becomes effective, in which case at the time it is first provided to the Underwriters for such use), will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement or Prospectus made in reliance upon and in conformity with information furnished to the Company in writing by any Underwriter or on behalf of any Underwriter expressly for use in the

Registration Statement or Prospectus or to that part of the Registration Statement which shall constitute the Statement of Eligibility and Qualification under the 1939 Act (Form T-1) of the trustees under the Company's Senior Indenture and Subordinated Indenture (as defined in the Prospectus).

(ii) The accountants who certified the financial statements and supporting schedules included in the Registration Statement are independent public accountants as required by the 1933 Act and the 1933 Act Regulations.

(iii) The consolidated financial statements included in the Registration Statement and the Prospectus present fairly the financial position of the Company and its consolidated subsidiaries as at the dates indicated and the results of their operations for the periods specified; except as otherwise stated in the Registration Statement or in said financial statements, said financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis; the supporting schedules included in the Registration Statement present fairly the information required to be stated therein; and the Company's ratios of earnings to fixed charges (actual and, if any, pro forma) included in the Prospectus under the caption "Ratio of Earnings to Fixed Charges," in the applicable Prospectus Supplement under the captions "Ratio of Earnings to Fixed Charges" and "Summary Financial Information" and in Exhibit 12 to the Registration Statement have been calculated in compliance with Item 503(d) of Regulation S-K of the Commission.

(iv) The documents incorporated or deemed to be incorporated by reference in the Prospectus, at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission under the 1934 Act (the "1934 Act Regulations"), and, when read together with the other information in the Prospectus, at the time the Registration Statement and any amendments thereto become effective and at the applicable Representation Date, will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

3

4

(v) Since the respective dates as of which information is given in the Registration Statement and the Prospectus, except as otherwise stated therein, (A) there has been no material adverse change in the condition, financial or otherwise, of the Company and its subsidiaries considered as one enterprise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, (B) there have been no

transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its subsidiaries considered as one enterprise and (C) except for regular periodic dividends, if any, on shares of Common Stock, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(vi) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the Commonwealth of Massachusetts with corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and to enter into and perform its obligations under this Agreement and the Terms Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which the character or location of its properties or the nature or the conduct of its business requires such qualification, except where the failure to be so qualified or to be in good standing would not have a material adverse effect on the Company and its subsidiaries considered as one enterprise.

(vii) Each subsidiary of the Company listed in Exhibit No. 22 to the Form 10-K annual report of the Company filed with the Commission under Section 13 of the 1934 Act for the most recent fiscal year ended which is a "significant subsidiary" as defined in Rule 405 of Regulation C of the 1933 Act Regulations (a "Significant Subsidiary"), if any, has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which the character or location of its properties or the nature or the conduct of its business requires such qualification, except where the failure to be so qualified or to be in good standing would not have a material adverse effect on the Company and its subsidiaries considered as one enterprise; all of the issued and outstanding capital stock of each such Significant Subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity.

(viii) Neither the Company nor any of its Significant Subsidiaries is in violation of its charter or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any material contract, indenture, mortgage, loan agreement, note, lease or other instrument to which the Company or any of its Significant Subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or any of its Significant Subsidiaries is subject, the effect of which violation or default would be material to the Company and its subsidiaries considered as one enterprise; and the execution, delivery and performance of this Agreement, the applicable Terms Agreement (including this Agreement as incorporated by reference therein), the Warrant Agreement, the Deposit

Agreement and the Securities, the filing of the Registration Statement and the consummation of the transactions contemplated herein and therein and compliance by the Company with its obligations hereunder and thereunder have been duly authorized by all necessary corporate action and will not conflict with or constitute a breach of, or default under, or

4

5

result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its Significant Subsidiaries pursuant to, any material contract, indenture, mortgage, loan agreement, note, lease or other instrument to which the Company or any of its Significant Subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or any of its Significant Subsidiaries is subject, nor will such action result in any violation of the provisions of the charter or by-laws of the Company or, to the best of its knowledge, any applicable law, administrative regulation or administrative or court decree.

(ix) No labor dispute with the employees of the Company or any of its Significant Subsidiaries exists or, to the knowledge of the Company, is imminent and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers or contractors, which might be expected to result in any material adverse change in the condition, financial or otherwise, or in the earnings or operations of the Company and its subsidiaries considered as one enterprise.

(x) There is no action, suit or proceeding before or by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company, threatened, against the Company or any of its subsidiaries, which is required to be disclosed in the Registration Statement (other than as disclosed therein), or which might result in any material adverse change in the condition, financial or otherwise, or in the earnings or operations of the Company and its subsidiaries considered as one enterprise, or which might materially and adversely affect the properties or assets thereof or which might materially and adversely affect the consummation of this Agreement and the applicable Terms Agreement; there are no contracts or documents of the Company or any of its subsidiaries which are required to be filed as exhibits to the Registration Statement by the 1933 Act or by the 1933 Act Regulations which have not been so filed.

(xi) The Company and its subsidiaries own or possess, or can acquire on reasonable terms, the patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service



marks and trade names (collectively, "patent and proprietary rights") presently employed by them in connection with the business now operated by them, except where the failure to own or possess or acquire on reasonable terms, the patent and proprietary rights, singly or in the aggregate, would not result in any material adverse change in the condition, financial or otherwise, or in the earnings or operations of the Company and its subsidiaries, considered as one enterprise, and neither the Company nor any of its subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any patent or proprietary rights, or of any facts which would render any patent and proprietary rights invalid or inadequate to protect the interest of the Company or any of its subsidiaries therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, singly or in the aggregate, would result in any material adverse change in the condition, financial or otherwise, or in the earnings or operations of the Company and its subsidiaries considered as one enterprise.

(xii) No authorization, approval or consent of any court or governmental authority or agency is necessary in connection with the consummation by the Company of the transactions contemplated by this Agreement and by the applicable Terms Agreement, including the offering, issuance or sale of the Securities hereunder, except such as may be required under the 1933 Act or the 1933 Act Regulations or state securities or Blue Sky laws.

5

6

(xiii) The Company and its Significant Subsidiaries possess such certificates, authorities or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct the business now operated by them, except such certificates, authorities or permits which are not material to such conduct of their business, and neither the Company nor any of its Significant Subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would materially and adversely affect the condition, financial or otherwise, or the earnings or operations of the Company and its subsidiaries considered as one enterprise.

(xiv) The Securities have been duly authorized for issuance and sale pursuant to this Agreement and the applicable Terms Agreement, or will have been so authorized prior to each issuance of Securities, and will have been duly executed by the Company. If applicable, the Preferred Shares, when issued and delivered by the Company pursuant to this Agreement and the applicable Terms Agreement against payment of the consideration set forth therein, will be validly issued, fully paid and non-assessable. If applicable, the



Preferred Shares represented by the Depositary Shares have been duly issued, are fully paid and non-assessable and have been deposited by the Company with the Depositary in accordance with the terms of the Deposit Agreement. If applicable, the Warrants, when issued, authenticated and delivered pursuant to the provisions of this Agreement and the applicable Terms Agreement and the applicable Warrant Agreement against payment of the consideration therefor in accordance with this Agreement and the applicable Terms Agreement, will be valid and binding obligations of the Company enforceable in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles, and will be entitled to the benefits of the respective Warrant Agreement relating thereto, which will be substantially in the form heretofore delivered to the Underwriters. The Company has the authorized capital stock as set forth in the Prospectus. The Securities, the Deposit Agreement, the Warrant Agreement and the Warrant Securities, conform in all material respects to all statements relating thereto contained in the Prospectus. This Agreement has been and, at the Representation Date, the applicable Terms Agreement will have been, duly executed and delivered by the Company. The issuance of the Securities is not subject to preemptive or other similar rights.

(xv) If applicable, the shares of Common Stock issuable upon conversion of any issue of the Preferred Shares or upon exercise of any Warrants have been duly authorized and reserved for issuance upon such conversion or exercise by all necessary corporate action and, when issued upon such conversion or exercise, will be validly issued, fully paid and non-assessable, and the issuance of such shares upon such conversion or exercise will be so authorized and will not be subject to preemptive rights. No further approval or authority of the stockholders or the Board of Directors of the Company will be required for the issuance of the Common Stock upon conversion of any such Preferred Shares or exercise of any such Warrants.

(xvi) If applicable, the Deposit Agreement has been duly authorized, executed and delivered by the Company or will be so authorized, executed and delivered, as the case may be, prior to the issuance of any applicable Depositary Shares, and constitutes or will constitute a valid and legally binding obligation of the Company enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles.

(xvii) If applicable, upon execution, authentication and delivery thereof pursuant to the terms of the Deposit Agreement, the persons in whose names the certificates evidencing Depositary

Shares are registered will be entitled to the rights specified therein and in the Deposit Agreement, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles.

(xviii) If applicable, the Warrant Agreement has been duly authorized by the Company and, when executed by the proper officers of the Company and delivered (assuming due execution and delivery thereof by the Warrant Agent), will constitute the valid and legally binding instrument of the Company enforceable in accordance with its terms except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles.

(xix) If the applicable Terms Agreement relates to Warrants and such Warrants are exercisable for securities other than Common Stock or other capital stock of the Company, such Terms Agreement will contain additional representations and warranties from the Company relating to such securities.

(b) Any certificate signed by any authorized officer of the Company and delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

## SECTION 2. SALE AND DELIVERY TO UNDERWRITERS; CLOSING.

(a) The several commitments of the Underwriters to purchase Securities pursuant to any Terms Agreement shall be deemed to have been made on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth. The Company agrees to sell to each Underwriter and each Underwriter, severally and not jointly, agrees to purchase at the price set forth in the applicable Terms Agreement, the aggregate number of Securities set forth in the applicable Terms Agreement, plus any additional Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof. The initial public offering price and the purchase price to be paid by the several Underwriters for the Securities and any other terms of the Securities (to the extent not set forth in the applicable Certificate of Designation, Deposit Agreement or Warrant Agreement) have been determined and set forth in the applicable Terms Agreement.

(b) Payment of the purchase price for, and delivery of certificates for, the Securities shall be made at the place set forth in the applicable Terms Agreement or at such other place as shall be agreed upon by the Representatives and the Company, at 10:00 A.M. on the fifth business day (unless postponed in accordance with the provisions of Section 10) following the date of the applicable Terms Agreement or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called the "First Closing Time"). Payment shall be made to the Company by certified or official bank check or checks drawn in New York Clearing House funds or similar next day funds payable to the order of the Company, against delivery to the Representatives for the respective accounts of the Underwriters of certificates or other instruments representing the

Securities to be purchased by them. Certificates for the Securities shall be in such denominations and registered in such names as the Representatives may request in writing at least two business days before the First Closing Time. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Securities which it has agreed to purchase. The certificates for the Securities

7

8

will be made available for examination and packaging by the Representatives not later than 10:00 A.M. on the last business day prior to the First Closing Time at the place set forth in the applicable Terms Agreement.

(c) If authorized by the applicable Terms Agreement, the Underwriters named therein may solicit offers to purchase Securities from the Company pursuant to delayed delivery contracts ("Delayed Delivery Contracts") substantially in the form of Exhibit B hereto, with such changes therein as the Company may approve. As compensation for arranging Delayed Delivery Contracts, the Company will pay to the Representatives at the time payment is made pursuant to such Delayed Delivery Contracts or such other time specified in the applicable Terms Agreement, for the accounts of the Underwriters, the fee set forth in such Terms Agreement in respect of the number of Securities for which Delayed Delivery Contracts are made. Any Delayed Delivery Contracts are to be with institutional investors of the types which will be set forth in the applicable Prospectus Supplement. At the applicable Closing Time the Company will enter into Delayed Delivery Contracts (for not less than the minimum number of Securities per Delayed Delivery Contract specified in the applicable Terms Agreement) with all purchasers proposed by the Underwriters and previously approved by the Company, as provided below, but not for an aggregate number of Securities in excess of that specified in the applicable Terms Agreement. The Underwriters will not have any responsibility for the validity or performance of Delayed Delivery Contracts.

The Representatives are to submit to the Company, at least three business days prior to the First Closing Time, the names of any institutional investors with which it is proposed that the Company will enter into Delayed Delivery Contracts and the number of Securities to be purchased by each of them, and the Company will advise the Representatives, at least two business days prior to the First Closing Time, of the names of the institutions with which the making of Delayed Delivery Contracts is approved by the Company and the number of Securities to be covered by each such Delayed Delivery Contract.

The number of Securities agreed to be purchased by the respective Underwriters pursuant to the applicable Terms Agreement shall be reduced by the number of Securities covered by Delayed Delivery Contracts, as to each Underwriter as set forth in a written notice delivered by the Representatives to the Company; provided, however, that the total number of Securities to be purchased by all Underwriters shall be the total number of Securities covered by the applicable Terms Agreement, less the number of Securities covered by

(d) In addition, if the Underwriters are granted an option to purchase Optional Securities pursuant to the applicable Terms Agreement, upon written notice from the Representative or Representatives, on behalf of the Underwriters, given to the Company not more than 30 days subsequent to the date of the initial public offering of the Securities, the Underwriters may purchase all or less than all of the Optional Securities with respect to the offering of Securities to which such Terms Agreement relates in accordance with the terms and provisions set forth in the applicable Terms Agreement. Such notice shall be given (i) at least two business days prior to the exercise of such option if the Second Closing Time (as defined below) is simultaneous with the First Closing Time, or (ii) at least three business days, but in no event more than five business days, prior to the exercise of such option if the Second Closing Time is subsequent to the First Closing Time. If granted by the Company, such option may only be exercised by the Underwriters once in connection with each initial public offering of Securities. The Company agrees to sell to the Underwriters the number of Optional Securities specified in such notice and the Underwriters agree, jointly and not severally, to purchase such Optional Securities. Such Optional Securities shall be purchased from the Company for the account of each Underwriter in the same proportion as the number of Securities set forth opposite such Underwriter's name in the applicable Terms Agreement bears to the total number of Securities covered by such Terms Agreement (subject to

adjustment by you to round purchases) and may be purchased by the Underwriters only for the purpose of covering over-allotments made in connection with the sale of such Securities. No Optional Securities shall be sold or delivered unless the related Securities previously have been, or simultaneously are, sold and delivered. The right to purchase the Optional Securities or any portion thereof may be surrendered and terminated at any time upon notice by the Representative or Representatives, on behalf of the Underwriters, to the Company.

Payment of the purchase price for, and delivery of certificates for, the Optional Securities shall be made at the place set forth in the applicable Terms Agreement or at such other place as shall be agreed upon by the Representatives and the Company (which may be the same as for the First Closing Time), but not later than seven business days after written notice of election to purchase Optional Securities is given (such time and date of payment and delivery being herein called the "Second Closing Time"). Payment shall be made to the Company by certified or official bank check or checks drawn in New York Clearing House funds or similar next day funds payable to the order of the Company, against delivery to the Representatives for the respective accounts of the Underwriters of certificates for the Optional Securities to be purchased by them. Certificates for the Optional Securities shall be in such denominations and registered in such names as the Representatives may request in writing at least two business days before the Second Closing Time. It is understood that each Underwriter has authorized the

Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Optional Securities which it has agreed to purchase. The certificates for the Optional Securities will be made available for examination and packaging by the Representatives not later than 10:00 A.M. on the last business day prior to the Second Closing Time at the place set forth in the applicable Terms Agreement.

SECTION 3. COVENANTS OF THE COMPANY. The Company covenants with each Underwriter as follows:

(a) From the date of the applicable Terms Agreement, and for so long as a Prospectus is required to be delivered in connection with the sale of Securities covered by such Terms Agreement, the Company will notify the Representatives, promptly, and confirm the notice in writing, (i) of the effectiveness of the Registration Statement and any amendment thereto (including any post-effective amendment), (ii) of the mailing or the delivery to the Commission for filing of any supplement to the Prospectus or any document to be filed pursuant to the 1934 Act which will be incorporated by reference into the Registration Statement or Prospectus, (iii) of the receipt of any comments from the Commission, (iv) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, and (v) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose. The Company will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment.

(b) Immediately following the execution of each Terms Agreement, the Company will prepare a Prospectus Supplement setting forth the number of Securities covered thereby and their terms, the names of the Underwriters and the number of Securities which each severally has agreed to purchase, the names of the Representatives, the price at which the Securities are to be purchased by the Underwriters from the Company, the initial public offering price, the selling concession and reallowance, if any, any delayed delivery arrangements, and such other information as the Representatives and the Company deem appropriate in connection with the offering of the Securities. The Company will promptly transmit copies of the Prospectus Supplement to the Commission for filing in accordance with Rule 424(b).

(c) From the date of the applicable Terms Agreement, and for so long as a Prospectus is required to be delivered in connection with the sale of Securities covered by such Terms Agreement, the Company will give the Representatives notice of its intention to file or prepare any amendment to the Registration Statement (including any post-effective amendment) or any amendment or supplement to the Prospectus (including any revised Supplemental Prospectus which the Company proposes for use by the Underwriters in connection with the offering of the Securities which differs from the prospectus on file at the Commission, whether or not such revised prospectus is required to be

filed pursuant to Rule 424(b) of the 1933 Act Regulations), whether pursuant to the 1933 Act, the 1934 Act or otherwise, will furnish the Representatives with copies of any such amendment or supplement or other documents a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file any such amendment or supplement or use any such prospectus to which the Representatives or counsel for the Underwriters shall reasonably object.

(d) The Company will deliver to the Representatives as many signed copies of the Registration Statement as originally filed and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and any documents incorporated or deemed to be incorporated by reference therein) as the Representatives may reasonably request and will also deliver to the Representatives a conformed copy of the Registration Statement as originally filed and of each amendment thereto (without exhibits) for each of the Underwriters. The Company will furnish to each Underwriter, from time to time during the period when the Prospectus is required to be delivered under the 1933 Act or the 1934 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request for the purposes contemplated by the 1933 Act or the 1934 Act with respect to the sale of any Securities covered by the applicable Terms Agreement.

(e) If at any time when the Prospectus is required by the 1933 Act to be delivered in connection with sales of the Securities any event shall occur or condition exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or counsel for the Company, to amend or supplement the Prospectus in order to make the Prospectus not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or if it shall be necessary, in the opinion of such counsel, at any such time to amend or supplement the Registration Statement or the Prospectus in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will forthwith prepare and file with the Commission such amendment or supplement, whether by filing documents pursuant to the 1934 Act or otherwise, so that, as so amended or supplemented, the Prospectus will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time it is delivered to a purchaser, not misleading or to make the Registration Statement comply with such requirements.

(f) The Company will endeavor, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions of the United States as the Representatives may designate; provided, however, that the Company shall not be obligated to qualify as a foreign corporation in any jurisdiction in which it is not so qualified. In each jurisdiction in which the Securities have been so qualified, the Company will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification in effect for a period of not less than one year from the effective date of the Registration Statement.

(g) With respect to each sale of Securities, the Company will make generally available to its security holders as soon as practicable, but not later than 90 days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Rule 158 of the 1933 Act Regulations) covering a twelve month period beginning, in



each case, not later than the first day

10

11

of the Company's fiscal quarter next following the "effective date" (as defined in said Rule 158) of the Registration Statement relating to such Securities.

(h) The Company, during the period when the Prospectus is required to be delivered under the 1933 Act or the 1934 Act, will file all documents required to be filed with the Commission pursuant to Section 13, 14 or 15 of the 1934 Act within the time periods required by the 1934 Act and the 1934 Act Regulations.

(i) Between the date of any Terms Agreement with respect to the offer and sale of Securities and the 60th day after such date (unless otherwise set forth in the applicable Terms Agreement) the Company will not, without the prior consent of the Representatives, directly or indirectly, sell, offer to sell, or enter into any agreement to offer or sell, any Securities of the same class or series or ranking on a parity with such Securities or, if such Terms Agreement relates to Securities that are convertible into or exercisable for Common Stock, any Common Stock or any security convertible into or exercisable for Common Stock (except for Common Stock issued or issuable pursuant to reservations or agreements, pursuant to any employee stock plan, stock ownership plan or dividend reinvestment plan or pursuant to any conversion of previously issued convertible securities of the Company).

SECTION 4. PAYMENT OF EXPENSES. The Company will pay all expenses incident to the performance of its obligations under this Agreement and each Terms Agreement, including (i) the printing and filing of the Registration Statement as originally filed and of each amendment thereto, (ii) the preparation, issuance and delivery of the certificates for the Securities to the Underwriters, (iii) the fees and disbursements of the Company's counsel and accountants, (iv) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of any Blue Sky Survey and any Legal Investment Survey, (v) the printing and delivery to the Underwriters of copies of the Registration Statement as originally filed and of each amendment thereto, of each preliminary prospectus, and of the Prospectus and any amendments or supplements thereto, (vi) the printing and delivery to the Underwriters of copies of the Deposit Agreement or the Warrant Agreement, as applicable, any Blue Sky Survey and any Legal Investment Survey, (vii) the fees and expenses, if any, incurred in connection with the listing of the Securities on any securities exchange, (viii) fees and expenses of the Depositary and the Warrant Agent, if any, and (ix) any fees payable in connection with the rating of the Securities.

If this Agreement or any Terms Agreement is terminated by the Representatives in accordance with the provisions of Section 5 or Section 9(a) (i) hereof, the Company shall reimburse the Underwriters for all of their



out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters in connection with the offer and sale of Securities covered by such Terms Agreement.

SECTION 5. CONDITIONS OF UNDERWRITERS' OBLIGATIONS. The obligations of the Underwriters to purchase Securities pursuant to any Terms Agreement at the First Closing Time and (if applicable pursuant to the terms of the applicable Terms Agreement) to purchase Optional Securities at the Second Closing Time are subject to the accuracy of the representations and warranties of the Company herein contained, to the accuracy of the statements of the Company's officers made in any certificate furnished pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder, and to the following further conditions:

(a) At the applicable Closing Time (i) no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act or proceedings therefor initiated or threatened by the Commission, (ii) the rating assigned by any nationally recognized securities rating

11

12

agency to any debt securities or preferred stock of the Company as of the date of the applicable Terms Agreement shall not have been lowered since the execution of such Terms Agreement and (iii) there shall not have come to the attention of the Representatives any facts that would cause them reasonably to believe that the Prospectus, together with the applicable Prospectus Supplement, at the time it was required to be delivered to a purchaser of the Securities, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at such time, not misleading.

(b) At the applicable Closing Time the Representatives shall have received:

(1) The favorable opinion, dated as of the applicable Closing Time, of Testa, Hurwitz & Thibeault, counsel for the Company, in form and substance satisfactory to counsel for the Representatives, to the effect that:

(i) The Company has been duly incorporated and is validly existing as a corporation in good corporate standing under the laws of the Commonwealth of Massachusetts.

(ii) The Company has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and to enter into and perform its obligations under this Agreement and the Terms Agreement.

(iii) Based solely on the opinion of local counsel to the Company or the general counsel of the Company, each Significant Subsidiary of the Company specified in the opinion based on a certificate furnished by the Company, has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement; all of the issued and outstanding capital stock of each Significant Subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and, to the best of such counsel's knowledge and information, is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity.

(iv) This Agreement, the applicable Terms Agreement and the Delayed Delivery Contracts, if any, have each been duly authorized, executed and delivered by the Company.

(v) The Registration Statement is effective under the 1933 Act and, to the best of such counsel's knowledge and information, no stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act or proceedings therefor initiated or threatened by the Commission.

(vi) The Registration Statement (other than the financial statements, supporting schedules and other financial and statistical information included or incorporated by reference therein, as to which no opinion need be rendered) complies as to form in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations.

12

13

(vii) The Securities covered by the applicable Terms Agreement, and, if applicable, the Deposit Agreement and the Warrant Agreement, conform in all material respects to the descriptions thereof contained in the Prospectus and the applicable Prospectus Supplement.

(viii) To the best of such counsel's

knowledge and information, there are no legal or governmental proceedings pending or threatened which are required to be disclosed in the Registration Statement, other than those disclosed therein.

(ix) The information in the Prospectus under "Description of Capital Stock," "Description of Depositary Shares," and "Description of Warrants" to the extent that it constitutes matters of law, summaries of legal matters, documents or proceedings, or legal conclusions, has been reviewed by such counsel and is correct in all material respects.

(x) To the best of such counsel's knowledge and information, there are no contracts, indentures, mortgages, loan agreements, notes, leases or other instruments required to be filed as exhibits to the Registration Statement other than those filed or incorporated by reference as exhibits thereto.

(xi) No authorization, approval, consent or order of any court or governmental authority or agency is required in connection with the offering, issuance or sale of the Securities covered by the applicable Terms Agreement to the Underwriters, except such as may be required under the 1933 Act or the 1933 Act Regulations or state securities law; and, to the best of such counsel's knowledge and information, the execution, delivery and performance of this Agreement, the applicable Terms Agreement, the Securities, and, if applicable, the Deposit Agreement and/or Warrant Agreement, the consummation of the transactions contemplated herein and therein and compliance by the Company with its obligations hereunder and thereunder will not conflict with or constitute a breach of, or default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to, any contract, indenture, mortgage, loan agreement, note, lease or other instrument known to such counsel to which the Company is a party or by which it may be bound, or to which any of the property or assets of the Company is subject, nor will such action result in any violation of the provisions of the charter or by-laws of the Company, or any applicable law, administrative regulation or administrative or court decree (except that no opinion will be expressed as to federal and state securities laws, except as otherwise explicitly set forth elsewhere in such opinion).

(xii) Each document filed pursuant to the 1934 Act (other than the financial statements, supporting schedules and other financial and statistical information included or incorporated by reference therein, as to which no opinion need be rendered) and incorporated or deemed to be

incorporated by reference in the Prospectus compiled when so filed as to form in all material respects with the 1934 Act and the 1934 Act Regulations.

13

14

(xiii) If applicable, the Preferred Shares covered by the applicable Terms Agreement have been duly authorized by the Company and, when issued and delivered against payment of the consideration set forth in this Agreement and the applicable Terms Agreement, will be validly issued, fully paid and non-assessable and, to the knowledge of such counsel, not subject to the preemptive rights of any stockholder.

(xiv) If applicable, the Depositary Shares covered by the applicable Terms Agreement, the Preferred Shares represented by such Depositary Shares and the deposit of such Preferred Shares by or on behalf of the Company with the Depositary in accordance with the Deposit Agreement have been duly authorized by the Company; when issued and deposited with the Depositary, the Preferred Shares represented by such Depositary Shares will be validly issued, fully paid and non-assessable (assuming issuance of the related Depositary Shares and delivery thereof against payment of the consideration set forth in this Agreement and in the applicable Terms Agreement). The Depositary Shares and the certificates evidencing such Depositary Shares are in the form contemplated by the Deposit Agreement and when executed by the Company and by the Depositary in the manner provided in the Deposit Agreement (assuming the due authorization, execution and delivery of the Deposit Agreement by the Depositary), and when delivered against payment of the purchase price therefor specified in the applicable Terms Agreement, will be validly issued and the holders of such Depositary Shares or the persons in whose names such Depositary Shares are registered will be entitled to the rights specified therein.

(xv) If the Securities are convertible into or, in the case of Warrants, exercisable for shares of Common Stock, the shares of Common Stock initially issuable upon conversion or exercise thereof have been duly authorized and reserved for issuance upon such conversion or exercise and, when issued upon such conversion or exercise, will be validly issued, fully paid and non-assessable, and,

to the knowledge of such counsel, the issuance of such shares upon such conversion will not be subject to preemptive rights. No further approval or authority of the stockholders or the Board of Directors of the Company will be required for the issuance of such shares of Common Stock upon conversion or exercise of such Securities.

(xvi) If applicable, the Warrants covered by the applicable Terms Agreement are in the form contemplated by the Warrant Agreement, have been duly authorized by the Company and when executed by the Company and authenticated by the Warrant Agent in the manner provided in the Warrant Agreement (assuming the due authorization, execution and delivery of the Warrant Agreement by the Warrant Agent) and delivered against payment of the purchase price thereof specified in the applicable Terms Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles, and will be entitled to the benefits of the Warrant Agreement.

14

15

(xvii) If applicable, the Deposit Agreement and/or the Warrant Agreement have been duly authorized, executed and delivered by the Company and constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, except as enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity.

(xviii) If the applicable Terms Agreement relates to Warrants and such Warrants are exercisable for securities other than Common Stock or other capital stock of the Company, such Terms Agreement may require that additional opinions be rendered by Testa, Hurwitz & Thibeault relating to such securities.

(xix) The applicable Terms Agreement may state that in specified instances Testa, Hurwitz & Thibeault may rely on the opinion of local counsel to

the Company or the general counsel of the Company when giving an opinion required pursuant to this Agreement or such Terms Agreement.

(2) The favorable opinion, dated as of Closing Time, of Goodwin, Procter & Hoar, counsel for the Underwriters, with respect to the matters set forth in (iv), (v), (vi), (vii), (viii) and (ix) inclusive, of subsection (b)(1) of this Section 5.

(3) In giving their opinions required by subsections (b)(1) and (b)(2), respectively, of this Section, Testa, Hurwitz & Thibault and Goodwin, Procter & Hoar shall each additionally state substantially to the following effect: that nothing has come to their attention that would lead them to believe that the Registration Statement (except for financial statements and schedules and other financial or statistical data included or incorporated by reference therein, as to which counsel need make no statement), at the time it became effective or if an amendment to the Registration Statement or an annual report on Form 10-K has been filed by the Company with the Commission subsequent to the effectiveness of the Registration Statement, then at the time of the most recent such filing, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the Prospectus as amended or supplemented at the date of the applicable Terms Agreement (except for financial statements and schedules and other financial or statistical data included or incorporated by reference therein, as to which counsel need make no statement) (unless the term "Prospectus" refers to a prospectus which has been provided to the Underwriters by the Company for use in connection with the offering of the Securities covered by the applicable Terms Agreement which differs from the Prospectus on file at the Commission at the time the Registration Statement becomes effective, in which case at the time it is first provided to the Underwriters for such use) or at the First Closing Time and (if applicable) the Second Closing Time, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) At the applicable Closing Time there shall not have been, since the date of the applicable Terms Agreement or since the respective dates as of which information is given in the Registration Statement and the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries

considered as one enterprise, whether or not arising in the ordinary course of business, and the Representatives shall have received a certificate of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company, dated as of such Closing Time, to the effect that (i) there has been no such material adverse change, (ii) the representations and warranties in Section 1 hereof are true and correct with the same force and effect as though expressly made at and as of the applicable Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the applicable Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been initiated or, to the best of their knowledge, threatened by the Commission.

(d) At the time of the execution of the applicable Terms Agreement, the Representatives shall have received from Coopers & Lybrand a letter dated such date, in form and substance satisfactory to the Representatives, to the effect that (i) they are independent public accountants with respect to the Company within the meaning of the 1933 Act and the 1933 Act Regulations, (ii) it is their opinion that the financial statements and financial statement schedules included in or incorporated by reference in the Registration Statement and covered by their opinions therein comply as to form in all material respects with the applicable accounting requirements of the 1933 Act and the 1933 Act Regulations, (iii) based upon limited procedures set forth in detail in such letter, nothing has come to their attention which causes them to believe that at a specified date not more than five days prior to the date of the applicable Terms Agreement, there has been any change in the capital stock of the Company or any increase in the consolidated long term debt of the Company and its subsidiaries or any decrease in consolidated net current assets or net assets as compared with the amounts shown in the Company's latest audited balance sheet or, during the period from the date of such balance sheet to a specified date not more than five days prior to the date of this Agreement, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated revenues, net income/(loss) or net income/(loss) per share of the Company and its subsidiaries, except in all instances for changes, increases or decreases which the Registration Statement and the Prospectus disclose have occurred or may occur, and (iv) in addition to the examination referred to in their opinions and the limited procedures referred to in clause (iii) above, they have carried out certain specified procedures, not constituting an audit, with respect to certain amounts, percentages and financial information which are included in the Registration Statement and Prospectus and which are specified by the Representatives, and have found such amounts, percentages and financial information to be in agreement with the relevant accounting, financial and other records of the Company and its subsidiaries identified in such letter.

(e) At the applicable Closing Time, the Representatives shall have received from Coopers & Lybrand a letter, dated as of such Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (d) of this Section 5, except that the specified date referred to shall be a date not more than five days prior to such Closing Time and, if the Company has elected to rely on Rule 430A of the 1933 Act Regulations, to the further effect that they have carried out procedures as specified in clause (iv) of subsection (d) of this Section with respect to certain amounts, percentages and financial information specified by



the Representatives and deemed to be a part of the Registration Statement pursuant to Rule 430(A)(b) and have found such amounts, percentages and financial information to be in agreement with the records specified in such clause (iv).

(f) At the applicable Closing Time, counsel for the Underwriters shall have been furnished with such documents and opinions as they may require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated and related proceedings, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance

16

17

and sale of the Securities as contemplated in the applicable Terms Agreement shall be satisfactory in form and substance to the Representatives and counsel for the Underwriters.

If any condition specified in this Section 5 shall not have been fulfilled when and as required to be fulfilled, the applicable Terms Agreement may be terminated by the Representatives by notice to the Company at any time at or prior to the applicable Closing Time, and such termination shall be without liability of any party to any other party except as provided in Section 4 hereof.

#### SECTION 6. INDEMNIFICATION.

(a) The Company agrees to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the information deemed to be part of the Registration Statement pursuant to Rule 430A(b) of the 1933 Act Regulations, if applicable, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body,



commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, if such settlement is effected with the written consent of the Company; and

(iii) against any and all expense whatsoever, as incurred (including, subject to Section 6(c) hereof, the fees and disbursements of counsel chosen by the Representatives), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

PROVIDED, HOWEVER, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use in the Registration Statement (or any amendment thereto). The foregoing indemnity agreement is in addition to any liability which the Company may otherwise have to any Underwriter or control person of that Underwriter.

(b) Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act against any and all loss, liability,

17

18

claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto) or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives expressly for use in the Registration Statement (or any amendment thereto) or such preliminary prospectus or the Prospectus (or any amendment or supplement thereto). The foregoing indemnity agreement is in addition to any liability which any Underwriter may otherwise have to the Company or any control person of the Company.

(c) Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability which it may have otherwise than on account of this indemnity agreement. An indemnifying party may participate at its own expense in the defense of any such action. In no event shall the indemnifying parties

be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances.

SECTION 7. CONTRIBUTION. In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 6 hereof is for any reason held to be unenforceable by the indemnified parties although applicable in accordance with its terms, the indemnifying party shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by said indemnity agreement incurred by the indemnified party or parties, as incurred, in such proportion that (i) if the Underwriters are the indemnifying party, the portion thereof contributed by the Underwriters equals the percentage of the initial public offering price appearing on the cover page of the Prospectus represented by the underwriting discount and commissions appearing thereon and (ii) if the Company is the indemnifying party, the portion thereof contributed by the Company equals the percentage of the initial public offering price appearing on the cover page of the Prospectus represented by the net proceeds to the Company (before deducting expenses) appearing thereon; provided, however, that no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act shall have the same rights to contribution as the Company. The Underwriters' obligations to contribute under this Section 7 are several and not joint. No Underwriter shall be required to contribute any amount in excess of the amount by which the total price of the Securities purchased by such Underwriter pursuant to the applicable Terms Agreement exceeds the amount of any damages which such Underwriter has otherwise paid or become liable to pay by reason of any untrue or alleged untrue statement or omission or alleged omission.

SECTION 8. REPRESENTATIONS, WARRANTIES AND AGREEMENTS TO SURVIVE DELIVERY. All representations, warranties and agreements contained in this Agreement and the applicable Terms Agreement, or contained in certificates of officers of the Company submitted pursuant hereto, shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or controlling person, or by or on behalf of the Company, and shall survive delivery of the Securities to the Underwriters.

SECTION 9. TERMINATION OF AGREEMENT.

(a) The Representatives may terminate the applicable Terms Agreement (including this Agreement, as incorporated by reference

therein), by notice to the Company, at any time at or prior to the applicable Closing Time (i) if there has been, since the date of such Terms Agreement or since the respective dates as of which information is given in the Registration Statement, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or elsewhere or any outbreak of hostilities or escalation thereof or other calamity or crisis the effect of which is such as to make it, in the judgment of the Representatives, impracticable to market the Securities covered by such Terms Agreement or to enforce contracts for the sale of such Securities, or (iii) if trading in the Common Stock has been suspended by the Commission, or if trading generally on either the American Stock Exchange or the New York Stock Exchange has been suspended, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices for securities have been required, by either of said Exchanges or by order of the Commission or any other governmental authority, or if a banking moratorium has been declared by either Federal, New York or Massachusetts authorities.

(b) If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof. Notwithstanding any such termination, (x) the covenants set forth in Section 3 with respect to any offering of Securities purchased from the Company and (y) the provisions of Section 4, the indemnity agreement set forth in Section 6, the contribution provisions set forth in Section 7, and the provisions of Sections 8 and 13 shall remain in effect.

SECTION 10. DEFAULT BY ONE OR MORE OF THE UNDERWRITERS. If one or more of the Underwriters shall fail at the First Closing Time or (if applicable) the Second Closing Time to purchase the Securities which it or they are obligated to purchase under the applicable Terms Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(a) if the aggregate number of Defaulted Securities does not exceed 10% of the aggregate number of Securities to be purchased pursuant to such Terms Agreement, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full number thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations under the applicable Terms Agreement of all non-defaulting Underwriters, or

(b) if the aggregate number of Defaulted Securities exceeds 10% of the aggregate number of Securities to be purchased pursuant to such Terms Agreement, such Terms Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Company.

No action taken pursuant to this Section 10 shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a

termination of the applicable Terms Agreement, either the Representatives or the Company shall have the right to postpone the applicable

19

20

Closing Time for a period not exceeding seven days in order to effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements.

SECTION 11. NOTICES. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to the Representatives as provided in the applicable Terms Agreement. Notices to the Company shall be directed to it at 111 Powdermill Road, Maynard, Massachusetts 01754-1418, attention of Ilene B. Jacobs, Vice President and Treasurer (MS02-2/F23), with a copy to Gail S. Mann, Esq., Assistant General Counsel, Secretary and Clerk (MS02-3/F13).

SECTION 12. PARTIES. The applicable Terms Agreement and this Agreement shall each inure to the benefit of and be binding upon the Underwriters and the Company and their respective successors. Nothing expressed or mentioned in the applicable Terms Agreement or this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters and the Company and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of such Terms Agreement or this Agreement or any provision herein or therein contained. Such Terms Agreement and this Agreement and all conditions and provisions hereof and thereof are intended to be for the sole and exclusive benefit of the Underwriters and the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 13. GOVERNING LAW AND TIME. This Agreement and the Terms Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed in said State. Specified times of day refer to New York City time.

20

21

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 between the Underwriters and the Company in accordance with its terms.

Very truly yours,

DIGITAL EQUIPMENT CORPORATION

By \_\_\_\_\_

Name:

Title:

21

22

EXHIBIT A

DIGITAL EQUIPMENT CORPORATION

[Title of Securities]

TERMS AGREEMENT

-----

Dated: \_\_\_\_\_, 1992

To: Digital Equipment Corporation  
146 Main Street  
Maynard, MA 01754

Dear Sirs:

We understand that Digital Equipment Corporation, a Massachusetts corporation (the "Company"), proposes to issue and sell the number of shares of its [Preferred Stock, \$1.00 par value (the "Preferred Shares")] [interests in Preferred Shares in the form of depositary shares (the "Depositary Shares"), represented by depositary receipts (the "Depositary Receipts")], [warrants to acquire \_\_\_\_\_ (the "Warrants")], (such [Preferred Shares][, Depositary Shares and Depositary Receipts], [Warrants] being collectively hereinafter referred to as the "Securities"). Subject to the terms and conditions set forth herein or incorporated by reference herein, \_\_\_\_\_ (the "Underwriter[s]") hereby offer[s] to purchase such Securities.

The Securities to be purchased by the Underwriter[s], shall have the following terms:

Title of Securities:  
Number of [Preferred Shares] [Depositary Shares] [Warrants]:  
[If applicable, fractional amount of Preferred Shares  
represented by each Depositary Share:]

[Current Ratings:]  
 [Dividend Rate: [\$\_\_\_\_\_] [\_\_\_\_%]. Payable:]  
 [Stated Value:]  
 [Liquidation Preference:]  
 [Ranking:]  
 Public offering price per share: \$\_\_\_\_\_ [, plus accumulated dividends, if any, from \_\_\_\_\_, 19\_\_.]  
 Purchase price per share: \$\_\_\_\_\_ [, plus accumulated dividends, if any, from \_\_\_\_\_, 19\_\_.]  
 [Conversion provisions:]  
 Additional co-managers, if any:  
 [Redemption provisions:]  
 Number of Option Securities, if any, that may be purchased by the Underwriters:  
 Delayed Delivery Contracts: [authorized] [not authorized]  
     [Date of Delivery:  
     Minimum Contract:  
     Fee:                    ] ]  
 Other terms:  
 Closing date and location:

Closing date and location: \_\_\_\_\_

Additional co-manager: \_\_\_\_\_

Additional underwriters: \_\_\_\_\_

All of the provisions contained in the document entitled "Digital Equipment Corporation Preferred Shares, Depositary Shares and Warrants to Purchase Equity Securities, Underwriting Agreement - Basic Provisions," dated as of January \_\_, 1994, a copy of which is attached hereto as Annex A, are herein incorporated by reference in their entirety and shall be deemed to be a part of this Terms Agreement to the same extent as if such provisions had been set forth in full herein. Terms defined in such document are used herein as therein defined. The Underwriter[s] agree[s], subject to the terms and provisions of this Terms Agreement, including the terms and provisions incorporated by reference herein, to purchase from the Company the following aggregate number of Securities: \_\_\_\_\_.

Any notice by the Company to the Underwriter[s] pursuant to this Terms Agreement shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication addressed to:

\_\_\_\_\_.

Please accept this offer by signing a copy of this terms Agreement in the space set forth below and returning the signed copy to us.

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

Accepted as of the date  
first above written:

DIGITAL EQUIPMENT CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT B

DIGITAL EQUIPMENT CORPORATION

[Title of Securities]

DELAYED DELIVERY CONTRACT

-----

Dated: \_\_\_\_\_, 19\_\_

Digital Equipment Corporation  
c/o [Name and address of Representatives]

Attention:

Dear Sirs:

The undersigned hereby agrees to purchase from Digital Equipment Corporation (the "Company"), and the Company agrees to sell to the undersigned on \_\_\_\_\_, 19\_\_ (the "Delivery Date"), \_\_\_\_\_ [insert title of security] \_\_\_\_\_ of the Company's (the "Securities"), offered by the Company's Prospectus dated \_\_\_\_\_, 1994, as supplemented by its Prospectus Supplement dated \_\_\_\_\_, 19\_\_, receipt of which is hereby acknowledged, at a purchase price of \_\_\_\_\_ and on the further terms and conditions set forth in this contract.

Payment for the Securities which the undersigned has agreed to purchase on the Delivery Date shall be made to the Company or its order by certified or official bank check in New York Clearing House funds, at the

office of [name and address of Representatives], on the Delivery Date, upon delivery to the undersigned of the Securities to be purchased by the undersigned in definitive form and in such denominations and registered in such names as the undersigned may designate by written or telegraphic communication addressed to the Company not less than five full business days prior to the Delivery Date.

The obligation of the undersigned to take delivery of and make payment for Securities on the Delivery Date shall be subject only to the conditions that (1) the purchase of Securities to be made by the undersigned shall not on the Delivery Date be prohibited under the laws of the jurisdiction to which the undersigned is subject and (2) the Company, on or before \_\_\_\_\_, 19\_\_, shall have sold to the Underwriters of the Securities (the "Underwriters") such number of the Securities as is to be sold to them pursuant to the Terms Agreement dated \_\_\_\_\_, 19\_\_ between the Company and the Underwriters. The obligation of the undersigned to take delivery of and make payment for Securities shall not be affected by the failure of any purchaser to take delivery of and make payment for Securities pursuant to other contracts similar to this contract. The undersigned represents and warrants to you that its investment in the Securities is not, as of the date hereof, prohibited under the laws of any jurisdiction to which the undersigned is subject and which govern such investment.

Promptly after completion of the sale to the Underwriters, the Company will mail or deliver to the undersigned at its address set forth below notice to such effect, accompanied by a copy of the opinion of counsel for the Company delivered to the Underwriters in connection therewith.

By the execution hereof, the undersigned represents and warrants to the Company that all necessary corporate action for the due execution and delivery of this contract and the payment for and purchase of the Securities has been taken by it and no further authorization or approval of any

24

25

governmental or other regulatory authority is required for such execution, delivery, payment or purchase, and that, upon acceptance hereof by the Company and mailing or delivery of a copy as provided below, this contract will constitute a valid and binding agreement of the undersigned in accordance with its terms.

This contract will inure to the benefit of and be binding upon the parties hereto and their respective successors, but will not be assignable by either party hereto without the written consent of the other.

It is understood that the Company will not accept Delayed Delivery Contracts for a number of Securities in excess of \_\_\_\_\_ and that the acceptance of any Delayed Delivery Contract is in the Company's sole discretion and, without limiting the foregoing, need not be on a first-come, first-served basis. If this contract is acceptable to the Company, it is requested that the Company sign the form of acceptance on a copy hereof and mail or deliver a



signed copy hereof to the undersigned at its address set forth below. This will become a binding contract between the Company and the undersigned when such copy is so mailed or delivered.

This Agreement shall be governed by the laws of the State of New York.

Yours very truly,

\_\_\_\_\_  
[Name of Purchaser]

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
[Address]

Accepted as of the date  
first above written

DIGITAL EQUIPMENT CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

<TABLE>

PURCHASER - PLEASE COMPLETE AT TIME OF SIGNING

The name and telephone number of the representative of the Purchaser with whom details of delivery on the Delivery Date may be discussed is as follows: (Please print.)

<CAPTION>

Name	Telephone No. (Including Area Code)
----	-----
<S>	<C>
_____	_____

</TABLE>



=====

DIGITAL EQUIPMENT CORPORATION

TO

BANKERS TRUST COMPANY, Trustee

---

INDENTURE

Dated as of January 21, 1994

---

=====

DIGITAL EQUIPMENT CORPORATION

Reconciliation and tie between Trust Indenture Act of 1939, as amended  
 by the Trust Indenture Reform Act of 1990, and  
 Indenture, dated as of January 21, 1994

<TABLE>

<CAPTION>

Trust Indenture  
Act Section

Indenture Section

<S>

<C>

<C>

Section 310

(a) (1)

609

(a) (2)

609

(a) (3)

Not Applicable

(a) (4)

Not Applicable

(a) (5)

609

(b)

608, 610

Section 311

(a)

613

(b)

613 (b)

(b) (2)

703 (a) (2), 703 (b)

Section 312

(a)

701, 702 (a)

(b)

702 (b)

(c)

702 (c)

Section 313

(a)

703 (a)

(b)

703 (b)

(c)

703 (a), 703 (b)

	(d)	703(c)
Section 314	(a)	704
	(b)	Not Applicable
	(c) (1)	102
	(c) (2)	102
	(c) (3)	Not Applicable
	(d)	Not Applicable
	(e)	102
Section 315	(a)	601(a)
	(b)	602
	(c)	601(b)
	(d)	601(c)
	(d) (1)	601(a) (1)
	(d) (2)	601(c) (2)
	(d) (3)	601(c) (3)
	(e)	514
Section 316	(a)	101
	(a) (1) (A)	502, 512
	(a) (1) (B)	513
	(a) (2)	Not Applicable
	(b)	508
	(c)	104

</TABLE>

3

<TABLE>

<CAPTION>

Trust Indenture

Act Section

<S>

<C>

Indenture Section

<C>

Section 317

(a) (1)

503

(a) (2)

504

(b)

1003

Section 318

(a)

107

</TABLE>

---

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

4

<TABLE>

## TABLE OF CONTENTS

NOTE: This table of contents shall not, for any purpose, be deemed to be a part of the Indenture.

<CAPTION>

PAGE

<S>

<C>

RECITALS OF THE COMPANY

1

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL

Section 101. Definitions	1
Act	2
Affiliate	2
Authenticating Agent	2
Board of Directors	2
Board Resolution	2
Business Day	2
Called Securities	2
Capitalized Lease Obligation	2
Capital Stock	2
Closing Price	3
Commission	3
Common Stock	3
Company	3
Company Request	3
Constituent Person	3
Conversion Agent	3
Conversion Price	3
Corporate Trust Office	3
Corporation	3
Debt Warrants	4
Defaulted Interest	4
Depository	4
Distribution Record Date	4
Dividend Record Date	4
Escrow Agent	4
Escrow Agreement	4
Event of Default	4
Exchange Act	4
Exchange Agent	4

&lt;/TABLE&gt;

(i)

5

&lt;TABLE&gt;

&lt;CAPTION&gt;

	PAGE
<S>	<C>
Exchange Rate	4
Exchange Securities	4
Global Security	5
Guaranty	5
Holder	5
Indebtedness	5
Indenture	6
Interest	6
Interest Payment Date	6
Market Price	6
Market Value of the Distribution	6
Material Subsidiary	6
Maturity	7
Obligation	7
Officers' Certificate	7
Opinion of Counsel	7
Original Issue Discount Security	7
Outstanding	7

Paying Agent	8
Payment Blockage Notice	8
Person	8
Place of Payment	8
Predecessor Security	9
Preferred Stock	9
Proceeding	9
Redemption Date	9
Redemption Price	9
Reference Date	9
Regular Record Date	9
Responsible Officer	9
Rights Record Date	9
Securities	9
Security Register	9
Senior Indebtedness	9
Short Term Rights	10
Special Record Date	10
Stated Maturity	10
Subsidiary	10
Trading Day	10
Trigger Events	10
Trustee	10
Trust Indenture Act	11
Unadjusted Distribution	11

</TABLE>

(ii)

6

<TABLE>

<CAPTION>

<S>

	PAGE
U.S. Government Obligations	11
Vice President	11
Section 102. Compliance Certificates and Opinions	11
Section 103. Form of Documents Delivered to Trustee	12
Section 104. Acts of Holders	12
Section 105. Notices, Etc., to Trustee and Company	13
Section 106. Notice to Holders; Waiver	14
Section 107. Conflict with Trust Indenture Act	14
Section 108. Effect of Headings and Table of Contents	14
Section 109. Successors and Assigns	15
Section 110. Separability Clause	15
Section 111. Benefits of Indenture	15
Section 112. Governing Law	15
Section 113. Legal Holidays	15
Section 114. Stockholders, Employees, Officers and Directors of Company Exempt from Individual Liability	15

ARTICLE TWO	SECURITY FORMS	16
	Section 201. Forms of Securities Generally	16
	Section 202. Securities in Global Form	17

ARTICLE THREE	THE SECURITIES	17
	Section 301. Amount Unlimited; Issuable in Series	18
	Section 302. Denominations	20
	Section 303. Execution, Authentication, Delivery and Dating	20
	Section 304. Temporary Securities	22

Section 305.	Registration, Registration of Transfer and Exchange	23
Section 306.	Mutilated, Destroyed, Lost and Stolen Securities	24
Section 307.	Payment of Interest; Interest Rights Preserved; Paying Agent	25
Section 308.	Persons Deemed Owners	27
Section 309.	Cancellation	27
Section 310.	Computation of Interest	28

ARTICLE FOUR	SATISFACTION AND DISCHARGE	28
Section 401.	Satisfaction and Discharge of Indenture	28
Section 402.	Application of Trust Money	29
Section 403.	Defeasance and Discharge of Securities	29

ARTICLE FIVE	EVENTS OF DEFAULT AND REMEDIES	31
Section 501.	Events of Default	31
Section 502.	Acceleration of Maturity; Rescission and Annulment	33
Section 503.	Collection of Indebtedness and Suits for Enforcement by Trustee	34
Section 504.	Trustee May File Proofs of Claim	35

</TABLE>

(iii)

7

<TABLE>

<CAPTION>

	PAGE	
<S>	<C>	
Section 505.	Trustee May Enforce Claims Without Possession of Securities	36
Section 506.	Application of Money Collected	36
Section 507.	Limitation on Suits	37
Section 508.	Unconditional Right of Holders to Receive Principal, Premium and Interest	37
Section 509.	Restoration of Rights and Remedies	38
Section 510.	Rights and Remedies Cumulative	38
Section 511.	Delay or Omission Not Waiver	38
Section 512.	Control by Holders	39
Section 513.	Waiver of Past Defaults	39
Section 514.	Undertaking for Costs	40
Section 515.	Waiver of Stay or Extension Laws	40

ARTICLE SIX	THE TRUSTEE	41
Section 601.	Certain Duties and Responsibilities of the Trustee	41
Section 602.	Notice of Defaults	42
Section 603.	Certain Rights of the Trustee	42
Section 604.	Not Responsible for Recitals or Issuance of Securities	43
Section 605.	May Hold Securities	44
Section 606.	Money Held in Trust	44
Section 607.	Compensation and Reimbursement	44
Section 608.	Disqualification; Conflicting Interests	45
Section 609.	Corporate Trustee Required; Eligibility	45
Section 610.	Resignation and Removal; Appointment of Successor	45
Section 611.	Acceptance of Appointment by Successor	47
Section 612.	Merger, Conversion, Consolidation or Succession to Business	48
Section 613.	Preferential Collection of Claims Against Company	48
Section 614.	Appointment of Authenticating Agent	49

ARTICLE SEVEN	HOLDERS' LISTS AND REPORTS BY TRUSTEE AND	
---------------	---	--



	COMPANY	50
Section 701.	Company to Furnish Trustee Names and Addresses of Holders	50
Section 702.	Preservation of Information; Communications to Holders	51
Section 703.	Reports by Trustee	52
Section 704.	Reports by Company	53
ARTICLE EIGHT	CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE	54
Section 801.	Company May Consolidate, Etc., Only on Certain Terms	54
Section 802.	Successor Substituted	55
ARTICLE NINE	SUPPLEMENTAL INDENTURES	55
Section 901.	Supplemental Indentures Without Consent of Holders	55
(iv)		
8		
<TABLE>		
<CAPTION>		
		PAGE
<S>		<C>
Section 902.	Supplemental Indentures with Consent of Holders	57
Section 903.	Effect of Holders' Consents	58
Section 904.	Execution of Supplemental Indentures	59
Section 905.	Effect of Supplemental Indentures	59
Section 906.	Conformity with Trust Indenture Act	59
Section 907.	Reference in Securities to Supplemental Indentures	59
ARTICLE TEN	COVENANTS	60
Section 1001.	Payment of Principal, Premium and Interest	60
Section 1002.	Maintenance of Office or Agency	60
Section 1003.	Money for Securities Payments to Be Held in Trust	60
Section 1004.	Corporate Existence	62
Section 1005.	Maintenance of Properties	62
Section 1006.	Payment of Taxes and Other Claims	62
Section 1007.	Statement by Officers as to Default	62
Section 1008.	Waiver of Certain Covenants	63
Section 1009.	Defeasance of Certain Obligations	63
Section 1010.	Applicability of Covenants	64
ARTICLE ELEVEN	REDEMPTION OF SECURITIES	65
Section 1101.	Applicability of Article	65
Section 1102.	Election to Redeem; Notice to Trustee	65
Section 1103.	Selection by Trustee of Securities to Be Redeemed	65
Section 1104.	Notice of Redemption	66
Section 1105.	Deposit of Redemption Price	67
Section 1106.	Securities Payable on Redemption Date	67
Section 1107.	Securities Redeemed in Part	67
Section 1108.	Conversion Arrangements on Call for Redemption	68
ARTICLE TWELVE	SINKING FUNDS	68
Section 1201.	Applicability of Article	68
Section 1202.	Satisfaction of Sinking Fund Payments with Securities	69
Section 1203.	Redemption of Securities for Sinking Fund	69
ARTICLE THIRTEEN	REPAYMENT AT THE OPTION OF HOLDERS	69
Section 1301.	Applicability of Article	69

ARTICLE FOURTEEN	SECURITIES IN FOREIGN CURRENCIES	70
	Section 1401. Applicability of Article	70
ARTICLE FIFTEEN	MEETINGS OF HOLDERS	70
	Section 1501. Purposes of Holders' Meetings	70
	Section 1502. Call of Meetings by Trustee	71

</TABLE>

(v)

9

<TABLE>

<CAPTION>

		PAGE
<S>		<C>
	Section 1503. Call of Meetings by Company or Holders	71
	Section 1504. Qualifications for Voting	71
	Section 1505. Regulations	72
	Section 1506. Voting	72
	Section 1507. Rights of Trustee or Holders not Delayed	73
ARTICLE SIXTEEN	SUBORDINATION OF SECURITIES	73
	Section 1601. Agreement to Subordinate	73
	Section 1602. Payment Over of Proceeds upon Dissolution, Etc	73
	Section 1603. No Payment When Senior Indebtedness in Default	75
	Section 1604. Reliance by Senior Indebtedness on Subordination Provisions.	76
	Section 1605. Subrogation to Rights of Holders of Senior Indebtedness	76
	Section 1606. Provisions Solely to Define Relative Rights	76
	Section 1607. Trustee to Effectuate Subordination	77
	Section 1608. No Waiver of Subordination Provisions	77
	Section 1609. Notice to Trustee	78
	Section 1610. Reliance on Judicial Order or Certificate of Liquidating Agent	79
	Section 1611. Trustee Not Fiduciary for Holders of Senior Indebtedness	79
	Section 1612. Rights of Trustee as Holder of Senior Indebtedness; Preservation of Trustee's Rights	79
	Section 1613. Article Applicable to Paying Agents	80
ARTICLE SEVENTEEN	CONVERSION OF SECURITIES	80
	Section 1701. Applicability of Article; Conversion Privilege and Conversion Price	80
	Section 1702. Exercise of Conversion Privilege	81
	Section 1703. Fractions of Shares	82
	Section 1704. Adjustment of Conversion Price	82
	Section 1705. Notice of Adjustments of Conversion Price	86
	Section 1706. Notice of Certain Corporate Action	87
	Section 1707. Company to Reserve Common Stock	87
	Section 1708. Taxes on Conversion	87
	Section 1709. Covenants as to Common Stock	88
	Section 1710. Cancellation of Converted Securities	88
	Section 1711. Provisions in Case of Consolidation, Merger or Sale of Assets; Special Distributions	88
	Section 1712. Trustee Adjustment Disclaimer; Company Determination Final	90
	Section 1713. When No Adjustment Required	90
	Section 1714. Equivalent Adjustments	90

ARTICLE EIGHTEEN	EXCHANGE OF SECURITIES	91
	Section 1801. Applicability of Article; Right of Exchange	91
	Section 1802. Method of Exchange	91

</TABLE>

(vi)

10

<TABLE>

<CAPTION>

	PAGE
<S>	<C>
Section 1803. Fractional Interests	93
Section 1804. Adjustment of Exchange Rate	93
Section 1805. Escrow Agreement	94
Section 1806. Notice of Certain Events	97
Section 1807. Transfer Taxes	98
Section 1808. Shares Free and Clear	99
Section 1809. Cancellation of Exchanged Securities	99
Section 1810. Provisions in Case of Consolidation, Merger or Sale of Assets of the Issuer of Exchange Securities	99
Section 1811. Certain Tender or Exchange Offers for Exchange Securities	100
Section 1812. Obligations of Trustee and Escrow Agent; Company Determination Final	100
Section 1813. Tax Adjustments of Exchange Rate	101
Section 1814. Cash Equivalent	103
Section 1815. Computation of Taxes Payable	103

</TABLE>

(vii)

11

INDENTURE, dated as of January 21, 1994, between DIGITAL EQUIPMENT CORPORATION, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts (herein called the "Company"), having its principal office at 146 Main Street, Maynard, Massachusetts 01754-2751, and Bankers Trust Company, a New York banking corporation, as Trustee (herein called the "Trustee").

#### RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness (herein called the "Securities"), to be issued in one or more series as in this Indenture provided.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities or of any series thereof, as follows:

ARTICLE ONE  
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 101. DEFINITIONS.

(a) For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(2) whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture. All terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in effect in the United States on the date of construction of any such term; and

12

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

(b) Certain terms, used principally in Article Six, are defined in that Article. Other terms used in this Indenture have the following meanings:

"Act", when used with respect to any Holder, has the meaning specified in Section 104 hereof.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified 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.

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 614 hereof to act on behalf of the Trustee to authenticate Securities of one or more series.

"Board of Directors" means either the board of directors of the Company or any duly authorized committee of that board.

"Board Resolution" means a copy of a resolution certified by the Secretary, the Clerk, an Assistant Secretary or an Assistant Clerk of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day", when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment are authorized or obligated by law or executive order to close.

"Called Securities" has the meaning specified in Section 1108.

"Capitalized Lease Obligation" means indebtedness represented by obligations under a lease that is recorded as capitalized for financial reporting purposes in accordance with generally accepted accounting principles and the amount of such indebtedness shall be the capitalized amount of such obligations determined in accordance with such principles.

"Capital Stock" of any Person means any and all shares, interests, participations, rights to purchase, warrants, options or other equivalents (however designated) of corporate stock or other equity of such Person.

2

13

"Closing Price" on any Trading Day with respect to the per share price of Common Stock means the last reported sales price regular way or, in case no such reported sale takes place on such Trading Day, the average of the reported closing bid and asked prices regular way, in either case on the New York Stock Exchange or, if not listed or admitted to trading on such Exchange, on the principal United States national securities exchange on which the Common Stock is listed or admitted to trading or, if not listed or admitted to trading on any United States national securities exchange, on the National Association of Securities Dealers Automated Quotations/National Market (Nasdaq/NNM) or, if the Common Stock is not listed or admitted to trading on any national securities exchange or quoted on Nasdaq/NNM, the average of the closing bid and asked prices in the over-the-counter market as furnished by any New York Stock Exchange member firm that is selected from time to time by the Company for that purpose.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Common Stock" of any Person means every share of each class (however designated) of the Capital Stock of such Person that is not Preferred Stock of such Person.

"Company" means the Person named as the "Company" in the first paragraph of this instrument until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor corporation.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by its Chairman of the Board, its President or a Vice President, and by its Treasurer, an Assistant Treasurer, its Secretary, an Assistant Secretary, its Clerk or an Assistant Clerk and delivered to the Trustee.

"Constituent Person" has the meaning specified in Section 1711.

"Conversion Agent" means any person authorized by the Company to act as Conversion Agent under this Indenture for purposes of Article Seventeen.

"Conversion Price" has the meaning specified in Section 1701.

"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 on the date of execution of this Indenture is located at Four Albany Street, New York, New York 10006.

"Corporation" includes corporations, associations, companies and business trusts.

3

14

"Debt Warrants" means certain warrants for the purchase of debt securities of the Corporation.

"Defaulted Interest" has the meaning specified in Section 307.

"Depository" means, with respect to the Securities of any series issuable or issued in the form of one or more Global Securities, the Person designated as Depository by the Company pursuant to Section 301 until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depository" shall mean or include each Person who is then a Depository hereunder, and if at any time there is more than one such Person, "Depository" as used with respect to the Securities of any series shall mean the Depository with respect to the Securities of that series. Each Depository must, at the time of its designation and at all times while it serves as Depository, be a clearing agency registered under the Exchange Act and any other applicable statute or regulation.

"Distribution Record Date" has the meaning specified in Section 1711.

"Dividend Record Date" has the meaning specified in Section 1704(1)

"Escrow Agent" means the Person named as Escrow Agent under the Escrow Agreement with respect to Exchange Securities for which any series of Securities is exchangeable pursuant to Article Eighteen and any successor Escrow Agent thereunder.

"Escrow Agreement" means any Escrow Agreement entered into pursuant to Section 1809 with respect to Exchange Securities for which any series of Securities is exchangeable pursuant to Article Eighteen, as the same may be supplemented and amended from time to time.

"Event of Default" has the meaning specified in Section 501.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute.

"Exchange Agent" means any person authorized by the Company to act as Exchange Agent under this Indenture for purposes of Article Eighteen.

"Exchange Rate" shall have the meaning provided in Section 1801.

"Exchange Securities" means any Capital Stock or other securities of a Person, other than the Company, owned by the Company for which Securities of any series may be exchangeable pursuant to Article Eighteen, as such shares of Capital Stock or securities may be changed or reclassified from time to time by any combination, subdivision or reclassification thereof to which Section 1804 applies. In the event a supplemental indenture is entered into pursuant to Section 1811 providing that the Holder of each Security then outstanding which

4

15

is exchangeable for Exchange Securities shall have the right to exchange such Security for any other Capital Stock or other securities or property (including cash), "Exchange Securities" shall include such other Capital Stock or other securities or property and, in the event the Company instructs the Escrow Agent to pay cash in lieu of delivering certificates representing Exchange Securities pursuant to Section 1815 and deposits such cash as required by Section 1815, "Exchange Securities" shall include such cash.

"Global Security" means a Security evidencing all or a part of a series of Securities, issued to and registered in the name of the Depositary for such series, or its nominee, in accordance with Section 303, and bearing the legend prescribed in Section 202.

"Guaranty" by any Person means any Obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including, without limitation, every Obligation of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (ii) to purchase property, securities or services for the purpose of assuring the holder of such Indebtedness of the payment of such Indebtedness or (iii) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness; provided, however, that a Guaranty by any Person shall not include endorsements by such Person for collection or deposit, in either case in the ordinary course of business. The terms "Guaranteed," "Guaranteeing" and "Guarantor" shall have meanings correlative to the foregoing.

"Holder" means a Person in whose name a Security is registered in the Security Register.

"Indebtedness" means, with respect to any Person, without duplication, (i) any Obligation of such Person relating to any indebtedness of such Person (A) for borrowed money (whether or not the recourse of the lender is to the whole of the assets, of such person or only to a portion thereof), (B) evidenced by notes, debentures or similar instruments (including purchase money obligations) given in connection with the acquisition of any property or assets (other than inventory or similar property acquired in the ordinary course of business), including securities, for the payment of which such Person is liable, directly or indirectly, or the payment of which is secured by a lien, charge or encumbrance on property or assets of such Person, (C) for goods, materials or services purchased in the ordinary course of business (other than trade accounts payable arising in the ordinary course of business), (D) with respect to letters of credit or bankers acceptances issued for the account of such Person or performance, surety or similar bonds, (E) for the payment of money relating to a Capitalized Lease Obligation or (F) under interest rate



swaps, caps or similar agreements and foreign exchange contracts, currency swaps or similar agreements; (ii) any liability of others of the kind described in the preceding clause (i), which such Person has Guaranteed or which is otherwise its legal liability; and (iii) any and all deferrals, renewals,

extensions and refunding of, or amendments, modifications or supplements to, any liability of the kind described in any of the preceding clauses (i) or (ii).

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Securities established as contemplated by Section 301; provided, however, that, if at any time more than one person is acting as Trustee under this Indenture due to the appointment of one or more separate Trustees for any one or more separate series of Securities pursuant to Section 610(e), "Indenture" shall mean, with respect to such series of Securities for which any such Person is Trustee, this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Securities for which such person is Trustee established as contemplated by Section 301, exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is not Trustee, regardless of when such terms or provisions were adopted, and exclusive of any provisions or terms adopted by means of one or more indentures supplemental hereto executed and delivered after such person had become such Trustee, but to which such person, as such Trustee, was not a party.

"Interest", when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

"Interest Payment Date", when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

"Market Price," when used with respect to any Exchange Securities as of any date, means, if such Exchange Securities are listed on a national securities exchange, the reported last sales price for such Exchange Securities on such exchange that is the primary market for such Exchange Securities, or if such Exchange Securities are not so listed, the reported last bid price therefor in the over-the-counter market on such date as recorded by any organization selected by the Company, or, if such bid price is not available, the market value thereof on such date determined by a firm of investment bankers or securities dealers having familiarity with such Exchange Securities selected by the Company; provided, however, that if any such date shall not be a Business Day, the Market Price shall be based on the specified price on the Business Day next preceding such date.

"Market Value of the Distribution" has the meaning specified in Section 1704.

"Material Subsidiary" means, with respect to the Company at any time, each existing Subsidiary and each Subsidiary hereafter acquired or formed which would constitute a "significant subsidiary" in accordance with Section 210.1-02

17

"Maturity", when used with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"Obligation" of any Person with respect to any specified Indebtedness means any obligation of such Person to pay principal, premium, interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to such Person, whether or not a claim for such post-petition interest is allowed in such Proceeding), penalties, reimbursement or indemnification amounts, fees, expenses or other amounts relating to such Indebtedness.

"Officers' Certificate" means a certificate signed by the Chairman of the Board, the President or Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary, an Assistant Secretary, the Clerk or an Assistant Clerk of the Company, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company, and who and which shall be reasonably acceptable to the Trustee.

"Original Issue Discount Security" means any Security which provides for an amount less than the principal amount thereof to be due and payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502.

"Outstanding", when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities which have been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company;

18

PROVIDED, HOWEVER, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon acceleration of the Maturity thereof pursuant to Section 502 hereof, (ii) the principal amount of a Security denominated in one or more foreign currencies or currency units shall be the U.S. dollar equivalent, determined as of the date of original issuance of such Security in the manner provided as contemplated by Section 301, of the principal amount (or, in the case of an Original Issue Discount Security, the U.S. dollar equivalent on the date of original issuance of such Security of the amount determined as provided in (i) above) of such Security, and (iii) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities owned as provided in clause (iii) above which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor. In case of a dispute as to such right, the advice of counsel shall be full protection in respect of any decision made by the Trustee in accordance with such advice. Upon request of the Trustee, the Company shall furnish to the Trustee an Officers' Certificate listing and identifying all Securities, if any, known by the Company to be owned or held by or for the account of any of the persons described in clause (iii) above; and, subject to Sections 601 and 602, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are Outstanding for the purpose of any such determination.

"Paying Agent" means any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Securities on behalf of the Company.

"Payment Blockage Notice" and "Payment Blockage Period" have the respective meanings specified in Section 1603.

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

"Place of Payment", when used with respect to the Securities of any series, means the place or places where, subject to Section 1002, the principal of (and premium, if any) and interest on the Securities of that series are payable as specified as contemplated by Section 301.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the

same debt as the mutilated, destroyed, lost or stolen Security.

"Preferred Stock" of any Person means every share of each class (however designated) of the Capital Stock of such Person that ranks prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up, to any other share of such or any other class of the Capital Stock of such Person.

"Proceeding" has the meaning specified in Section 1602.

"Redemption Date", when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price", when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"Reference Date" has the meaning specified in Section 1704.

"Regular Record Date" for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 301.

"Responsible Officer", when used with respect to the Trustee, means any officer within the Corporate Trust and Agency Group (or any successor group) including, without limitation, any vice president, any assistant secretary, any assistant treasurer, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Rights Record Date" has the meaning specified in Section 1704(2).

"Securities" has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 305.

"Senior Indebtedness" means Indebtedness of the Company, whether outstanding on the date of this Indenture or thereafter created, incurred, assumed or guaranteed by the Company, other than the following: (1) any Indebtedness as to which, in the instrument evidencing such Indebtedness or

pursuant to which such Indebtedness was issued, it is expressly provided that such Indebtedness is subordinate in right of payment to all indebtedness of the Company not expressly subordinated to such Indebtedness; (2) any Indebtedness which by its terms refers explicitly to the Securities and states that such Indebtedness shall not be senior, shall be pari passu or shall be subordinated in right of payment to the Securities; and (3) with respect to any series of Securities, any Indebtedness of the Company evidenced by Securities of the same or of another series. Notwithstanding anything to the contrary in the

foregoing, Senior Indebtedness shall not include: (a) Indebtedness of or amounts owed by the Company for compensation to employees, or for goods or materials purchased in the ordinary course of business, or for services, or (b) Indebtedness of the Company to a Subsidiary of the Company.

"Short Term Rights" has the meaning specified in Section 1704(2).

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Company pursuant to Section 307.

"Stated Maturity," when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

"Subsidiary" means, with respect to any Person, any corporation or other business entity of which securities representing more than 50% of the combined voting power of the total voting stock (or in the case of an association or other business entity which is not a corporation, more than 50% of the equity interest) is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof. When used herein without reference to any Person, Subsidiary means a Subsidiary of the Company. For the purposes of this definition, "voting stock" means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

"Trading Day" means each day on which the securities exchange or other market which is used to determine the Closing Price is open for trading or quotation.

"Trigger Events" has the meaning specified in Section 1704.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

10

21

"Trust Indenture Act" means the Trust Indenture Act of 1939 (15 U.S.C. Section 77aaa - 77bbbb), as amended by the Trust Indenture Reform Act of 1990, as in force at the date as of which this instrument was executed, except as provided in Section 905, as such act may be amended from time to time.

"Unadjusted Distribution" has the meaning specified in Section 1704(4).

"U.S. Government Obligations," means direct non-callable obligations of or non-callable obligations unconditionally guaranteed by, the United States of America for the payment of which obligation or guarantee the full faith and credit of the United States of America is pledged.

"Vice President," when used with respect to the Company or any other entity, means any vice president (except that in the case of the Company, such

term shall be limited to those vice presidents who are elected by the Board of Directors), whether or not designated by a number or a word or words added before or after the title "vice president."

SECTION 102. COMPLIANCE CERTIFICATES AND OPINIONS.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (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 each such individual, he has made such examination or investigation as is necessary to enable him 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, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 103. FORM OF DOCUMENTS DELIVERED TO TRUSTEE.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company, stating that the information with respect to such factual matters is in the possession of the

Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

#### SECTION 104. ACTS OF HOLDERS.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 601) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any

12

23

such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The Company may, in the circumstances permitted by the Trust Indenture Act or by this Indenture, fix any day as the record date for the purpose of determining the Holders of Securities of any series entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Holders of Securities of such series. If not set by the Company prior to the first solicitation of a Holder of Securities of such series made by any person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 701) prior to such first solicitation or vote, as the case may be, except otherwise expressly provided herein. With regard to any record date for action to be taken by the Holders of one or more series of Securities, only the Holders of Securities of such series on such date (or their duly designated proxies) shall be entitled to give or take, or vote on, the relevant action.

(d) The ownership of Securities shall be proved by the



Security Register; as to any matter relating to beneficial ownership interests in any Global Security, the appropriate Depository's records shall be dispositive for purposes of this Indenture.

(e) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

SECTION 105. NOTICES, ETC., TO TRUSTEE AND COMPANY.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, Attention: Corporate Trust and Agency Group,

(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in

13

24

writing to the Trustee by the Company, Attention: Treasurer (with a copy to the General Counsel), or

(3) either the Trustee or the Company, by the other party, shall be sufficient for every purpose hereunder if given by facsimile transmission, receipt confirmed by telephone followed by an original copy delivered by guaranteed overnight courier: if to the Trustee at facsimile number (212) 250-6961; and if to the Company at facsimile number (617) 493-7417.

SECTION 106. NOTICE TO HOLDERS; WAIVER.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date, if any, and not earlier than the earliest date, if any, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.



In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

SECTION 107. CONFLICT WITH TRUST INDENTURE ACT.

If any provision hereof limits, qualifies or conflicts with another provision hereof which is required or deemed to be included in this Indenture by any of the provisions of the Trust Indenture Act, such required provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

SECTION 108. EFFECT OF HEADINGS AND TABLE OF CONTENTS.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

14

25

SECTION 109. SUCCESSORS AND ASSIGNS.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 110. SEPARABILITY CLAUSE.

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

SECTION 111. BENEFITS OF INDENTURE.

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 112. GOVERNING LAW.

This Indenture and the Securities shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts; provided that the duties, obligations and rights of the Trustee shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 113. LEGAL HOLIDAYS.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security or the last date on which a Holder has the right to convert or exchange a Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities, other than a provision of the Securities of any series that specifically states that it shall apply in lieu of this Section 113) payment of interest or principal (and premium, if any) or conversion or exchange of such

Security need not be made at such Place of Payment on such date, but (except as otherwise provided in a Board Resolution, Officers' Certificate or supplemental indenture with respect to Securities of any Series) may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, or on such last day for conversion or exchange; provided that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be.

SECTION 114. STOCKHOLDERS, EMPLOYEES, OFFICERS AND DIRECTORS OF COMPANY  
EXEMPT FROM INDIVIDUAL LIABILITY.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security, or because of any indebtedness evidenced thereby, shall be had against any past, present or future

15

26

stockholder, employee, officer or director, as such, of the Company or of any successor, either directly or through the Company or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the Holders and as part of the consideration for the issue of the Securities.

ARTICLE TWO  
SECURITY FORMS

SECTION 201. FORMS OF SECURITIES GENERALLY.

The Securities of each series shall be substantially in the form of Exhibit A hereto or in such other form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary, an Assistant Secretary, the Clerk or an Assistant Clerk of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 303 for the authentication and delivery of such Securities.

The Trustee's certificates of authentication shall be substantially in the form set forth below:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

BANKERS TRUST COMPANY,  
as Trustee

The definitive Securities shall be printed, lithographed or engraved on steel engraved borders or mechanically reproduced on safety paper, or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

16

27

SECTION 202. SECURITIES IN GLOBAL FORM.

If Securities of a series shall be issuable in the form of one or more Global Securities, then notwithstanding clause (10) of Section 301 and the provisions of Section 302, any such Global Security or Securities may provide that it or they shall represent the aggregate amount of all Outstanding Securities of such series (or such lesser amount as is permitted by the terms thereof) from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be increased or reduced from time to time to reflect exchanges. Any endorsement of any Global Security to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders, of Outstanding Securities represented thereby shall be made by the Trustee in such manner or by such Person or Persons as shall be specified therein or in the Company Order to be delivered pursuant to Section 303 or 304 with respect thereto and the records of the registrar for such Global Securities shall be conclusive evidence of the aggregate principal amount outstanding of any Global Security. Subject to the provisions of Section 303 and, if applicable, Section 304, the Trustee shall deliver and redeliver any Global Security in permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Company Order.

Unless otherwise specified as contemplated by Section 301, payment of principal of and any premium and interest on any Global Security in permanent global form shall be made to the registered Holder thereof.

Any Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

"This Security is a Global Security within the meaning set forth in the Indenture hereinafter referred to and is registered in the name of a Depositary or a nominee of a Depositary. 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 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 its nominee to a successor Depositary or its nominee."

17

28

ARTICLE THREE  
THE SECURITIES

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from all other Securities);

(2) the currency or currencies, including composite currencies, in which payment of the principal of (and premium, if any) and interest on the Securities of the series shall be payable (if other than the currency of the United States of America) and the manner of determining the equivalent thereof in the currency of the United States of America for purposes of the definition of "Outstanding" in Section 101;

(3) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 304, 305, 306, 906 or 1107 and except for any Securities which, pursuant to Section 303, are deemed never to have been authenticated and delivered hereunder);

(4) if the amount of payments of principal of (and premium, if any) or interest on the Securities of the series may be determined with reference to an index, the manner in which such amounts shall be determined;

(5) the date or dates on which the principal of the Securities of the series is payable;

(6) the rate or rates at which the Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, or the method or methods, if any, by which such date or dates shall be determined, the Interest Payment Dates on which such interest shall be payable, the Regular Record Date for the interest payable on any Interest Payment Date and the basis upon which interest shall be calculated if other than a 360-day year of twelve 30-day months;

(7) the place or places where the principal of (and premium, if any) and interest on Securities of the series shall be payable, where Securities of the series may be surrendered for registration of transfer or for

exchange and where demands to or upon the Company in respect of the Securities of the series and this Indenture may be served;

(8) the period or periods within which, the price or prices

at which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company;

(9) the obligation, if any, of the Company to redeem or purchase Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(10) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(11) if other than the principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502;

(12) whether the Securities of the series shall be issued in the form of one or more Global Securities and in such case, (a) if registered securities of the series are to be issuable as a Global Security, the Depositary for such Global Security or Securities, which Depositary shall be a clearing agency registered under the Exchange Act, and (b) the circumstances under which any such Global Security may be exchanged for Securities registered in the name of, and any transfer of such Global Security may be registered to, a person other than such Depositary or its nominee, if other than as set forth in Section 305;

(13) if the principal of or any premium or interest on any Securities of the series is to be payable, at the election of the Company or a Holder thereof, in one or more currencies or currency units other than that or those in which the Securities are stated to be payable, the currency, currencies or currency units in which payment of the principal of or any premium and interest on Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made;

(14) if the Securities are to be issued upon the exercise of Debt Warrants, the time, manner and place for the Securities to be authenticated and delivered;

(15) any deletions from, modifications of or additions to the Events of Default or covenants of the Company with respect to the Securities, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth in the general provisions of this

Indenture, and any change in the right of any Trustee or any of the holders to declare the principal amount of any of the Securities due and payable;

(16) whether the Securities will be convertible into or exchangeable for Common Stock or other securities or into Securities of another series of the Company and, if so, the terms and conditions upon which such Securities will be so convertible or exchangeable, including the conversion or exchange price and the conversion or exchange period; and

(17) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such Board Resolution and set forth in such Officers' Certificate or in any such indenture supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary, an Assistant Secretary, the Clerk or an Assistant Clerk of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

#### SECTION 302. DENOMINATIONS.

The Securities of each series shall be issuable in registered form without coupons in such denominations as shall be specified as contemplated by Section 301. In the absence of any such provisions with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of \$1,000 and any integral multiple thereof.

#### SECTION 303. EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

The Securities shall be executed on behalf of the Company by its Chairman of the Board, its President or one or its Vice Presidents, under its corporate seal reproduced thereon attested by its Secretary, one of its Assistant Secretaries, its Clerk or one of its Assistant Clerks. The signature of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Security or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order

for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. If the form or terms of the Securities of the series have been established in or pursuant to one or more Board Resolutions as permitted by Section 201 and 301, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, (a) an Opinion of Counsel stating:

(1) that the form of such Securities has been established in conformity with the provisions of this Indenture;

(2) that the terms of such Securities have been established in conformity with the provisions of this Indenture; and

(3) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles;

and (b) an Officers' Certificate stating:

(1) that the aggregate principal amount of the Outstanding Securities, following the issuance of such Securities, will not exceed the maximum principal amount authorized by the Company's Board of Directors; and

(2) that the Company is not currently in default and, following the issuance of such Securities, will not be in default under this Indenture.

If all of the Securities of a series are not to be originally issued at the same time, then the documents required to be delivered pursuant to the third paragraph of this Section 303 must be delivered only once, prior to the authentication and delivery of the first Security of such series; provided, however, that any subsequent request by the Company to the Trustee to authenticate Securities of such series upon original issuance shall be deemed to constitute a representation and warranty by the Company that, as of the date of such request, the statements made in the Officers' Certificate delivered pursuant to the third paragraph of this Section 303 shall be true and correct as if made on such date.

If the Company shall establish pursuant to Section 301 that the Securities of a series are to be issued in the form of one or more Global Securities, then the Company shall execute and the Trustee shall, in accordance with this Section 303 and the Company Order with respect to such series, authenticate and deliver one or more Global Securities that shall be registered in the name of the Depository for such Global Security or Securities or the

nominee of such depository and shall be delivered by the Trustee to such Depository or pursuant to such Depository's instruction.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to



the benefits of this Indenture.

Notwithstanding the foregoing, if any Security (including a Global Security) shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 309 together with a written statement (which need not comply with Section 102 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

#### SECTION 304. TEMPORARY SECURITIES.

Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

Except in the case of temporary Securities issued in global form, which shall be exchanged in accordance with the provisions thereof, if temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of the same series of authorized denominations. Until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

#### SECTION 305. REGISTRATION, REGISTRATION OF TRANSFER AND EXCHANGE.

With respect to Securities issued in definitive registered form, if any, the Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security of any series at the office or agency in a Place of Payment for the series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series, of any authorized denomination and of a like aggregate



principal amount.

Notwithstanding any other provision of this Section 305, unless and until it is exchanged in whole or in part for Securities in definitive registered form, a Global Security representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depository for such series to a nominee of such Depository, by a nominee of such Depository to such Depository or by such Depository or any such nominee to a successor Depository for such series or a nominee of such successor Depository.

At the option of the Holder, Securities of any series (except a Global Security) may be exchanged for other Securities of the same series, of any authorized denominations and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

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

Every Security presented or surrendered for registration of transfer or for exchange shall be duly endorsed or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection

with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 906 or 1107 not involving any transfer.

Notwithstanding the foregoing and except as otherwise specified or contemplated by Section 301, any Global Security shall be exchangeable pursuant to this Section 305 or Sections 304 and 1107 for Securities registered in the name of any person other than the Depository for such Security or its nominee only if (i) such Depository notifies the Company that it is unwilling or unable to continue as Depository for such Global Security or if at any time such Depository ceases to be a clearing agency registered under the Exchange Act; (ii) the Company executes and delivers to the Trustee a Company Order that such Global Security shall be so exchangeable and the transfer thereof so registrable (which Company Order will authorize and direct the Trustee to authenticate and deliver upon such exchange Securities of such series in definitive registered form, in authorized denominations, in the aggregate principal amount equal to the principal amount or amounts of such Global Security or Securities) or (iii) there shall have occurred and be continuing an Event of Default with respect to the Securities of such series. Upon the occurrence in respect of any Global Security of any series of any one or more of the conditions specified in clause (i), (ii) or (iii) of the preceding sentence or such other conditions as may be specified pursuant to Section 301, such Global Security may be exchanged for Securities registered in the names

of, and the transfer of such Global Security may be registered to, such persons (including persons other than the Depositary with respect to such series and its nominees) as such Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall direct. Such Securities shall be delivered at the Corporate Trust Office to the persons in whose names such Securities are so registered. Notwithstanding any other provision of this Indenture, any Security authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, any Global Security shall also be a Global Security and shall bear the legend specified in Section 202 except for any Security authenticated and delivered in exchange for, or upon registration of transfer of, a Global Security pursuant to the preceding sentence. Upon the exchange of a Global Security for Securities in definitive registered form such Global Security shall be cancelled by the Trustee.

The Company shall not be required (i) to issue, register the transfer of or exchange Securities of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of that series selected for redemption under Section 1103 and ending at the close of business on the day of such mailing, or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

#### SECTION 306. MUTILATED, DESTROYED, LOST AND STOLEN SECURITIES.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

24

35

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and upon its request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount and 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, the Company in its discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section 306, 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 expenses (including the fees and expenses of the Trustee) connected therewith.

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

The provisions of this Section are 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 307. PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED; PAYING AGENT.

Interest on any Security which 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 (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be

25

36

fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Company shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee of such Special Record Date and, in the name and at the expense of the Company, the Trustee shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2);

(2) The Company may make payment of any Defaulted Interest on the Securities of any series in any other lawful manner not

inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section 307, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

The Company shall maintain an office or agency where Securities may be presented for payment. The Trustee is hereby appointed "Paying Agent." The Company may appoint one or more additional Paying Agents. The term Paying Agent includes any additional Paying Agent. The Company or any of its subsidiaries may act as Paying Agent.

The Company shall enter into an appropriate agency agreement with any Paying Agent not a party to this Indenture that shall implement the provisions of this Indenture that relate to such Paying Agent. The Company shall give prompt written notice to the Trustee of the name and address of any such Paying Agent and any change in the address of such Paying Agent.

26

37

In the case of any Security which is converted after any Regular Record Date and on or prior to the next succeeding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date), interest, the Stated Maturity of which is on such Interest Payment Date, shall be payable on such Interest Payment Date notwithstanding such conversion, and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on such Regular Record Date. Except as otherwise expressly provided in the immediately preceding sentence, in the case of any Security which is converted, interest the Stated Maturity of which is after the date of conversion of such Security shall not be payable.

#### SECTION 308. PERSONS DEEMED OWNERS.

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any) and (subject to Section 307) interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. All such payments so made to any such person, or upon his order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

No Holder of any beneficial interest in any Global Security held on its behalf by a Depository shall have any rights under this Indenture with respect to such Global Security, and such Depository shall be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. None of the Company, the Trustee, any Paying Agent or the Security Registrar will have any

responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in any Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

SECTION 309. CANCELLATION.

All Securities surrendered for payment, redemption, registration of transfer or exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be destroyed by

27

38

the Trustee and a certificate of destruction provided to the Company, unless the Trustee is otherwise directed by a Company Order.

SECTION 310. COMPUTATION OF INTEREST.

Except as otherwise specified as contemplated by Section 301 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

ARTICLE FOUR  
SATISFACTION AND DISCHARGE

SECTION 401. SATISFACTION AND DISCHARGE OF INDENTURE.

This Indenture shall upon Company Request cease to be of further effect (except as to any surviving rights of conversion, exchange, registration of transfer or exchange of Securities herein expressly provided for), and the Trustee, at the expense of the Company, shall execute instruments in form and substance satisfactory to the Trustee and the Company 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 306 and (ii) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation (i) have become due and payable, (ii) will become due and payable at their Stated Maturity within one year, (iii)

are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, or (iv) are deemed paid and discharged pursuant to Section 403, and the Company, in the case of clauses (i), (ii), (iii) or (iv) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

28

39

(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 provided for 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 607, the obligations of the Company to any Authenticating Agent under Section 614 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section 401, the obligations of the Trustee under Section 402 and the last paragraph of Section 1003 shall survive.

#### SECTION 402. APPLICATION OF TRUST MONEY.

(a) Subject to the provisions of the last paragraph of Section 1003, all money deposited with the Trustee pursuant to Section 401, all money and U.S. Government Obligations deposited with the Trustee pursuant to Section 403 or 1009 and all money received by the Trustee in respect of U.S. Government Obligations deposited with the Trustee pursuant to Section 403 or 1009 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for the payment of which such money and U.S. Government Obligations have been deposited with or received by the Trustee.

(b) The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against U.S. Government Obligations deposited pursuant to Section 403 or 1009 or the interest and principal received in respect of such obligations other than any payable by or on behalf of Holders.

(c) The Trustee shall deliver or pay to the Company from time to time upon Company Request any U.S. Government Obligations or money held by it as provided in Section 403 or 1009 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are then in excess of the amount thereof which then would have been required to be deposited for the



purpose for which such U.S. Government Obligations or money were deposited or received. In addition, all moneys deposited with the Trustee pursuant to Section 401 (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be returned to the Company upon Company Request.

SECTION 403. DEFEASANCE AND DISCHARGE OF SECURITIES.

The Company shall be deemed to have paid and discharged the entire indebtedness on all the Outstanding Securities of any series on the 91st day

29

40

after the date of the deposit referred to in subparagraph (1) below, the provisions of this Indenture (except as to the right of Holders of such Securities to receive, from the trust funds described in subparagraph (1) below, payment of the principal of (and premium, if any) and each installment of interest on such Outstanding Securities on the Stated Maturity of such principal or installment of interest (including any mandatory sinking fund or analogous payments), the Company's obligations with respect to such Securities under Sections 305, 306, 1002 and 1003, and the rights, powers, trusts, duties and immunities of the Trustee hereunder) shall no longer be in effect, and the Trustee, upon Company Request and at the expense of the Company, shall execute instruments in form and substance satisfactory to the Company and the Trustee acknowledging the same, provided that the following conditions shall have been satisfied:

(1) the Company has deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 609 hereof), irrevocably (irrespective of whether the conditions in subparagraphs (2), (3), (4) and (5) below have been satisfied and except as provided in Section 402(c)), as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities, with reference to this Section 403, (i) money in an amount, (ii) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms, without regard to any reinvestment thereof, will provide not later than the close of business on the day prior to the due date of any payment referred to in this paragraph (1) money in an amount, or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the principal of (and premium, if any), including any mandatory sinking fund or analogous payments, and each installment of interest on such Outstanding Securities on the Stated Maturity of such principal or installment of interest on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities;

(2) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is party or by which it is bound;

(3) no Event of Default or event which, after notice or lapse of time or both, would become an Event of Default shall have occurred and be continuing on the date of such deposit, and no Event of Default under Section 501(5) or 501(6) or event which, after notice or lapse of time or both, would become an Event of Default under Section

501(5) or 501(6) shall have occurred and be continuing on the 91st day after such date;

(4) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel to the effect that the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or that since the date of this Indenture there has been a change in applicable tax laws, in either case to the effect that Holders of such Securities will not recognize income, gain or loss for

30

41

Federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to Federal income tax on the same amounts and in the same manner and at the same times, as would have been the case if such deposit, defeasance and discharge had not occurred; and

(5) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the defeasance and discharge of the entire indebtedness on all such Outstanding Securities as contemplated by this Section 403 have been complied with.

Notwithstanding the cessation, termination and discharge of all obligations, covenants and agreements (except as provided above in this Section 403) of the Company under this Indenture with respect to any series of Securities, the obligations of the Company to the Trustee under Section 607, the obligations of the Trustee to any Authenticating Agent under Section 614 and the obligations of the Trustee under Section 402 and the last paragraph of Section 1003 shall survive with respect to such series of Securities.

#### ARTICLE FIVE EVENTS OF DEFAULT AND REMEDIES

##### SECTION 501. EVENTS OF DEFAULT.

"Event of Default", wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 days, whether or not such payment is prohibited by Article Sixteen;

(2) default in the payment of the principal of (or premium, if any, on) any Security of that series at its Maturity, whether or not such payment is prohibited by Article Sixteen;

(3) default in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series, whether or not such payment is prohibited by Article Sixteen;

(4) subject to Section 1009 hereof, default in the



performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section 501 specifically dealt with or which has expressly been included in this

Indenture solely for the benefit of series of Securities other than that series), and continuance of such default or breach for a period of 90 days after there has 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 principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(5) the entry by a court of competent jurisdiction of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of the affairs of the Company, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days (or any dismissal, stay, rescission or termination ceasing to remain in effect);

(6) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding seeking to be adjudicated a bankrupt or insolvent, or the consent by the Company to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Company or of any substantial part of its property, or the making by the Company of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action; or

(7) any other Event of Default provided with respect to Securities of that series.

Upon receipt by the Trustee of any Notice of Default pursuant to this Section 501 with respect to Securities of a series all or part of which is represented by a Global Security, a record date shall be established for determining Holders of Outstanding Securities of such series entitled to join

in such Notice of Default, which record date shall be at the close of business on the day the Trustee receives such Notice of Default. The Holders on such

43

record date, or their duly designated proxies, and only such Persons, shall be entitled to join in such Notice of Default, whether or not such Holders remain Holders after such record date; provided, that if Holders of less than the requisite percentage in principal amount of the Outstanding Securities of such series, or their proxies, shall have joined in such Notice of Default prior to the day which is 90 days after such record date, such Notice of Default shall automatically and without further action by any Holder be cancelled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new Notice of Default identical to a Notice of Default which has been cancelled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 501.

SECTION 502. ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT.

If an Event of Default (other than an Event of Default described in Section 501(5) or 501(6)) with respect to Securities of any series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount (or, if the Securities of that series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all of the Securities of that series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) and all accrued interest thereon, if any, shall become immediately due and payable. In case an Event of Default described in Section 501(5) or 501(6) shall occur, such amount shall be due and payable without any declaration of acceleration or any act on the part of the Trustee or the Holders.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article Five provided, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Company and the Trustee, may rescind and annul such declaration of acceleration and its consequences if:

- (1) the Company has paid or deposited with the Trustee a sum sufficient to pay
  - (A) all overdue interest on all Securities of that series,
  - (B) the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Securities,

44

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agent and counsel (including without limitation all amounts set forth in Section 607 hereof);

and

(2) all Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 513.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Upon receipt by the Trustee of any written notice declaring such an acceleration, or rescission and annulment thereof, with respect to Securities of a series all or part of which is represented by a Global Security, a record date shall be established for determining Holders of Outstanding Securities of such series entitled to join in such notice, which record date shall be at the close of business on the day the Trustee receives such notice. The Holders on such record date or their duly designated proxies, and only such Persons, shall be entitled to join in such notice, whether or not such Holders remain Holders after such record date; provided, that unless such declaration of acceleration, or rescission and annulment, as the case may be, shall have become effective by virtue of the requisite percentage having joined in such notice prior to the day which is 90 days after such record date, such notice of declaration of acceleration, or rescission and annulment, as the case may be, shall automatically and without further action by any Holder be cancelled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new written notice of declaration of acceleration, or rescission and annulment thereof, as the case may be, that is identical to a written notice which has been cancelled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 502.

SECTION 503. COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE.

The Company covenants that if:

(1) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days; or

34

45

(2) default is made in the payment of the principal of (or premium, if any, on) any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal (and premium, if any) and interest and, to the extent

that payment of such interest shall be legally enforceable, interest on any overdue principal (and premium, if any) and on any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, 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.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities, wherever situated.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

#### SECTION 504. TRUSTEE MAY FILE PROOFS OF CLAIM.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of, the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(1) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Securities and to file such 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,

35

46

disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding; and

(2) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official 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 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 607.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan or 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, except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar person.

In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Securities, and it shall not be necessary to make any Holders of the Securities parties to any such proceedings.

SECTION 505. TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

SECTION 506. APPLICATION OF MONEY COLLECTED.

Any money collected by the Trustee pursuant to this Article Five shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 607; and

36

47

SECOND: To the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal (and premium, if any) and interest, respectively.

SECTION 507. LIMITATION ON SUITS.

No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other

remedy hereunder, unless:

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; 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 principal amount of the Outstanding Securities of that series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

#### SECTION 508. UNCONDITIONAL RIGHT OF HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST.

Notwithstanding any other provision in this Indenture but subject to the provisions of Article Sixteen, the Holder of any Security shall have the right, which is absolute and unconditional and shall not be impaired without the consent of such Holder, to

37

48

- (1) receive payment of the principal of (and premium, if any) and (subject to Section 307) interest on such Security on the Stated Maturity or Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date);
- (2) convert such Security in accordance with Article Seventeen if such Security is so convertible;
- (3) exchange such Security in accordance with Article Eighteen, if such Security is exchangeable; and
- (4) institute suit for the enforcement of any such payment, right to convert or right to exchange, as the case may be.

#### SECTION 509. RESTORATION OF RIGHTS AND REMEDIES.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 510. RIGHTS AND REMEDIES CUMULATIVE.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 511. DELAY OR OMISSION NOT WAIVER.

No delay or omission of the Trustee or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article Five or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

38

49

SECTION 512. CONTROL BY HOLDERS.

The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided that:

(1) such direction shall not be in conflict with any rule of law or with this Indenture; and

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Upon receipt by the Trustee of any written notice directing the time, method or place of conducting any such proceeding or exercising any such trust or power, with respect to Securities of a series all or part of which is represented by a Global Security, a record date shall be established for determining Holders of Outstanding Securities of such series entitled to join in such notice, which record date shall be at the close of business on the day the Trustee receives such notice. The Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to join in



such notice, whether or not such Holders remain Holders after such record date; provided, that if less than the Holders of a majority in principal amount of the Outstanding Securities of such series shall have joined in such notice prior to the day which is 90 days after such record date, such notice shall automatically and without further action by any Holder be cancelled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new notice identical to a notice which has been cancelled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 512.

Nothing in this Indenture shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction by Holders.

#### SECTION 513. WAIVER OF PAST DEFAULTS.

The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default:

(1) in the payment of the principal of (or premium, if any) or interest, if any, on any Security of such series; or

39

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(2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the persons entitled to waive any past default hereunder. If a record date is fixed, the Holders of securities of such series on such record date, or their duly designated proxies, and only such persons, shall be entitled to waive any default hereunder, whether or not such Holders remain Holders after such record date; provided, that unless such majority in principal amount of the Outstanding Securities of any series shall have waived such default prior to the date which is 90 days after such record date, any such waiver previously given shall automatically and without further action by any Holder of securities of such series be cancelled and of no further effect.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

#### SECTION 514. UNDERTAKING FOR COSTS.

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, 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, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits



and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 514 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security on or after the Stated Maturity or Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date).

SECTION 515. WAIVER OF STAY OR EXTENSION LAWS.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution

40

51

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.

ARTICLE SIX  
THE TRUSTEE

SECTION 601. CERTAIN DUTIES AND RESPONSIBILITIES OF THE TRUSTEE.

(a) With respect to the Securities of any series, except during the continuance of an Event of Default with respect to the Securities of such series:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; 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; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture, but shall not be under any duty to verify the contents or accuracy thereof.

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

(c) No provision of this Indenture shall be construed to

relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section;

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of any series relating to the time, method

41

52

and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such series; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 601.

#### SECTION 602. NOTICE OF DEFAULTS.

Within 90 days after the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series, as their names and addresses appear in the Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Security of such series or in the payment of any sinking fund installment with respect to Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interest of the Holders of Securities of such series. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

#### SECTION 603. CERTAIN RIGHTS OF THE TRUSTEE.

Subject to the provisions of Section 601:

(1) the Trustee may rely and shall be protected in acting or

refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

42

53

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

(4) the Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(5) 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 reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) 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, unless requested in writing so to do by the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of any series; provided that, if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such expenses or liabilities as a condition to proceeding; the reasonable expenses of every such examination shall be paid by the Holders or, if paid by the Trustee, shall be repaid by the Holders upon demand. 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 relevant to the facts or matters that are the subject of its inquiry, personally or by agent or attorney; and

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or

through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

SECTION 604. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES.

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee or any Authenticating Agent assumes no responsibility for their correctness. The trustee makes no representations as

43

54

to the validity or sufficiency of this Indenture or of the Securities. The Trustee or any Authenticating Agent shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

SECTION 605. MAY HOLD SECURITIES.

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 608 and 613 hereof, may otherwise deal with the Company with the same rights it would have it if were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

SECTION 606. MONEY HELD IN TRUST.

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

SECTION 607. COMPENSATION AND REIMBURSEMENT.

The Company agrees:

(1) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(3) to indemnify the Trustee (in its individual capacity and as Trustee) and each of its officers, directors, attorneys in fact and agents for, and to hold each of them harmless against, any loss, liability, claim or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Indenture or the trust or trusts hereunder, including the costs and expenses of defending itself against any claim

or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The obligations of the Company under this Section to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture. Such additional indebtedness

44

55

shall be a senior claim to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Securities, and the Securities are hereby subordinated to such senior claim. When the Trustee incurs expenses or renders services after an Event of Default specified in clauses (5) and (6) under Section 501 occurs, the expenses and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law.

SECTION 608. DISQUALIFICATION; CONFLICTING INTERESTS.

If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

SECTION 609. CORPORATE TRUSTEE REQUIRED; ELIGIBILITY.

There shall at all times be a Trustee hereunder which shall be a person that is eligible pursuant to the Trust Indenture Act to act as such and have a combined capital and surplus of at least \$50,000,000 subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 609, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. Neither the Company nor any person directly or indirectly controlling, controlled by, or under common control with the Company shall serve as Trustee. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 609, it shall resign immediately in the manner and with the effect hereinafter specified in this Article Six.

SECTION 610. RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article Six shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 611.

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(c) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 608 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months;

(2) the Trustee shall cease to be eligible under Section 609 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation.

then in any such case, (i) the Company by a Board Resolution may remove the Trustee with respect to all Securities, or (ii) subject to Section 514, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 611. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 611 become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 611, the Trustee or any Holder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series by mailing written notice of such event by first class mail, postage prepaid to all Holders of Securities of such series as the names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

SECTION 611. ACCEPTANCE OF APPOINTMENT BY SUCCESSOR.

(a) In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which:

(1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates;

(2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee; and

(3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee;

and upon the execution and delivery of such supplemental indenture the



resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in Subsection (a) or (b) of this Section 611, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article Six.

Upon acceptance of appointment by a successor Trustee with respect to the Securities of any series as provided in this Section 611, the Company shall mail notice thereof by first-class mail, postage prepaid to all Holders of Securities of such series as their names and addresses appear in the Security Register. If the acceptance of appointment is substantially contemporaneous with the resignation, then the notice called for by the preceding sentence may be combined with the notice called for by Section 610. If the Company fails to mail such notice within 10 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Company.

#### SECTION 612. MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article Six, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

#### SECTION 613. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the

provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

SECTION 614. APPOINTMENT OF AUTHENTICATING AGENT.

The Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Whenever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 614, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 614, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 614.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section 614, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of the Section 614, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Securities of the series with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Security Register.

Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 614.

The Company agrees to pay each Authenticating Agent from time to time reasonable compensation for its services under this Section 614.

If an appointment with respect to one or more series is made pursuant to this Section 614, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

This is one of the Securities of the series  
designated therein referred to in the  
within-mentioned Indenture.

BANKERS TRUST COMPANY,  
As Trustee

By \_\_\_\_\_  
As Authenticating Agent

By \_\_\_\_\_  
Authorized Signature

ARTICLE SEVEN  
HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 701. COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF  
HOLDERS.

The Company will furnish or cause to be furnished to the Trustee:

(1) semi-annually, not later than June 20 and December 20 in each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of the preceding June 15 or December 15, as the case may be, and

(2) at such other times as the Trustee may request in writing, within 10 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

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61

PROVIDED, HOWEVER, that so long as the Trustee is acting as Securities Registrar, no such list need be furnished.

SECTION 702. PRESERVATION OF INFORMATION; COMMUNICATIONS TO HOLDERS.

(a) The Trustee shall preserve, in as current form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 701 and the

names and addresses of Holders received by the Trustee in its capacity as Security Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 701 upon receipt of a new list so furnished.

(b) If three or more Holders (herein referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders with respect to their rights under this Indenture or under the Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five business days after the receipt of such application, at its election, either:

(1) afford such applicants access to the information preserved at the time by the Trustee in accordance with Subsection (a) of this Section 702; or

(2) inform such applicants as to the approximate number of Holders whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Subsection (a) of this Section 702, and as to the approximate cost of mailing to such Holders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Holder whose name and address appear in the information preserved at the time by the Trustee in accordance with Subsection (a) of this Section 702 a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Holders with reasonable promptness after the entry

of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Subsection (b) of this Section 702, regardless of the source from which such information was derived, and that the Trustee shall

not be held accountable by reason of mailing any material pursuant to a request made under Subsection (b) of this Section 702.

SECTION 703. REPORTS BY TRUSTEE.

(a) Within 60 days after September 15 of each year commencing with the year 1993, so long as any Securities of any series are outstanding, the Trustee shall transmit by mail to all Holders, as their names and addresses appear in the Security Register, a brief report dated as of such September 15 with respect to any of the following events which have occurred within the previous twelve months (but if no such event has occurred within such period, no report need be transmitted):

(1) any change to its eligibility under Section 609 and its qualifications under Section 608;

(2) the creation of or any material change to a relationship specified in paragraphs (1) through (10) of Section 310(b) of the Trust Indenture Act;

(3) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Securities, on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than 1/2 of 1% of the principal amount of the Securities Outstanding on the date of such report;

(4) any change to the amount, interest rate and maturity date of all other indebtedness owing by the Company (or by any other obligor on the Securities) to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in paragraphs (2), (3), (4) or (6) of Section 311 of the Trust Indenture Act;

(5) any change to the property and funds, if any, physically in the possession of the Trustee as such on the date of such report;

52

63

(6) any release or release and substitution of property subject to the lien of this Indenture (and the consideration therefor, if any) which the Trustee has not previously reported;

(7) any additional issue of Securities which the Trustee has not previously reported; and

(8) any action taken by the Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Securities, except action in respect of a default, notice of which has been or is to be withheld by the Trustee in accordance with Section 602.

(b) The Trustee shall transmit by mail to all Holders, as their names and addresses appear in the Security Register, a brief report with respect to the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to Subsection (a) of this Section 703 (or if no such report has yet been so transmitted, since the date of execution of this instrument) for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Securities, on property or funds held or collected by it as Trustee and which it has not previously reported pursuant to this Subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances remaining unpaid at any time aggregate 10% or less of the principal amount of the Securities Outstanding at such time, such report to be transmitted within 90 days after such time.

(c) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when any Securities are listed on any stock exchange.

#### SECTION 704. REPORTS BY COMPANY.

The Company shall:

(1) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and

53

64

registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations;

(3) transmit by mail to all Holders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission; and

(4) furnish to the Trustee the certificate required by Section 1007(a). For purposes of such certificate, compliance by the Company with all conditions and covenants of this Indenture shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

ARTICLE EIGHT  
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 801. COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

The Company shall not consolidate with or merge into any other corporation or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to any Person, and the Company shall not permit any Person to consolidate with or merge into the Company or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to the Company, unless:

(1) in case the Company shall consolidate with or merge into another corporation or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to any Person, the corporation 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 as an entirety or substantially as an entirety shall be a corporation organized and 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 (and premium, if any) and interest on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed and all other obligations of the Company under this Indenture and the Securities;

54

65

(2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Company or a Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of 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 comply with this Article Eight and that all conditions precedent herein provided for relating to such transaction have been complied with.

SECTION 802. SUCCESSOR SUBSTITUTED.



Upon any consolidation by the Company with or merger by the Company into any other Person or any conveyance, transfer or lease of the properties and assets of the Company as an entirety or substantially as an entirety in accordance with Section 801, 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 NINE  
SUPPLEMENTAL INDENTURES

SECTION 901. SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS.

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Securities;

(2) to add any Events of Default or additional covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series), and to

55

66

make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, that in respect of any such additional covenant such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such an Event of Default or may limit the remedies available to the Trustee upon such an Event of Default or may limit the right of the Holders of a majority in aggregate principal amount of the Securities to waive such an Event of Default;

(3) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons;

(4) to add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, provided that any such addition, change or elimination (i) shall neither (A) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (B) modify the rights of the Holder of any such Security

with respect to such provision or (ii) shall become effective only when there is no such Security Outstanding;

(5) to secure the Securities;

(6) to establish the form or terms of Securities of any series as permitted by Sections 201 and 301;

(7) to make provisions with respect to the conversion rights of Holders pursuant to Article Seventeen;

(8) to make provisions with respect to the exchange rights of Holders pursuant to Article Eighteen;

(9) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 611(b); or

(10) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein or in any supplemental indenture, or to make any other

56

67

provisions with respect to matters or questions arising under this Indenture, provided such action shall not adversely affect the interests of the Holders of Securities of any series in any material respect.

The Trustee is hereby authorized to join in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects in a manner not reasonably acceptable to the Trustee the Trustee's own rights, duties or immunities under this Indenture or otherwise.

#### SECTION 902. SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS.

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or change the due date of any sinking fund payment in respect of any Security, or alter the provisions concerning repayment at the option of the Holder in respect of any Security, or alter the provisions concerning

redemption at the election of the Company in respect of any Security in a manner materially adverse to such Holder, or reduce the principal amount of any Security or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date) or (if Securities of such series are convertible) adversely affect the right of a Holder to convert any Security as provided in Article Seventeen, or, (if Securities of such series are exchangeable) adversely affect the right of a Holder to exchange any Security as provided in Article Eighteen, or modify the provisions of this Indenture with respect to the subordination of the Securities in a manner materially adverse to the Holders; or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with certain

57

68

provisions of this Indenture or certain defaults hereunder and their consequences provided for in this Indenture; or

(3) modify any of the provisions of this Section 902, Section 513 or Section 1008, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby, provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section 902 and Section 1008, or the deletion of this proviso, in accordance with the requirements of Sections 611(b) and 901(7).

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modified the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It shall not be necessary for any Act of Holders under this Section 902 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Upon the request of the Company, accompanied by a copy of a Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Holders and other documents, if any, required by this Section 902, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects in a manner not reasonably acceptable to the Trustee the Trustee's own rights, duties or immunities under this Indenture or

otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section 902, the Company shall mail a notice thereof by first-class mail, postage prepaid to all Holders of Securities affected thereby, as their names and addresses appear on the Security Registry, setting forth in general terms the substance of such supplemental indenture. 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 supplemental indenture.

#### SECTION 903. EFFECT OF HOLDERS' CONSENTS.

(a) Until an amendment or waiver becomes effective, a consent to it by a Holder of a Security is a continuing consent by the Holder and every subsequent Holder or 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. An amendment or waiver becomes

58

69

effective upon receipt by the Trustee of such Officers' Certificate and the written consents from the Holders of the requisite percentage in principal amount of Securities.

(b) The Company may, but shall not be obligated to, fix a record date for the purpose of determining the persons entitled to consent to any indenture supplemental hereto. If a record date is fixed, the Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to consent to such supplemental indenture, whether or not such Holders remain Holders after such record date; provided, that unless such consent shall have become effective by virtue of the requisite percentage having been obtained prior to the date which is 90 days after such record date, any such consent previously given shall automatically and without further action by any Holder be cancelled and of no further effect.

#### SECTION 904. EXECUTION OF SUPPLEMENTAL INDENTURES.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article Nine or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel as conclusive evidence that such supplemental indenture is authorized or permitted by this Indenture, that it is not inconsistent herewith, that all conditions precedent to the execution thereof have been met, and that it will be a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

#### SECTION 905. EFFECT OF SUPPLEMENTAL INDENTURES.

Upon the execution of any supplemental indenture under this Article Nine, 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.

SECTION 906. CONFORMITY WITH TRUST INDENTURE ACT.

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

SECTION 907. REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article Nine may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to

59

70

conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of each series.

ARTICLE TEN  
COVENANTS

SECTION 1001. PAYMENT OF PRINCIPAL, PREMIUM AND INTEREST.

The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of (and premium, if any) and interest on the Securities of that series in accordance with the terms of the Securities and this Indenture.

SECTION 1002. MAINTENANCE OF OFFICE OR AGENCY.

The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange, where Securities may be surrendered for conversion and where notices and demands to or for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that Series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such

other office or agency.

SECTION 1003. MONEY FOR SECURITIES PAYMENTS TO BE HELD IN TRUST.

If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest

60

71

so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 1003, that such Paying Agent will:

- (1) hold all sums held by it for the payment of the principal of (and premium, if any) or interest on Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;
- (2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment of principal (and premium, if any) or interest on the Securities of that series; and
- (3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same terms as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company in trust for the payment of the principal of (and premium, if any) or interest on any Security of any series and remaining unclaimed for two years after such principal (and premium, if any) or interest has become due and

payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying

61

72

Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

#### SECTION 1004. CORPORATE EXISTENCE.

Subject to Article Eight, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, all material rights (charter and statutory) and material franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

#### SECTION 1005. MAINTENANCE OF PROPERTIES.

The Company will cause all of the properties used or useful in, and material to, the conduct of its business or the business of any Material Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment; provided, however, that nothing in this Section 1005 shall prevent the Company from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business or the business of any such Subsidiary and not disadvantageous in any material respect to the Holders.

#### SECTION 1006. PAYMENT OF TAXES AND OTHER CLAIMS.

The Company will pay or discharge or cause to be paid or discharged, within 30 days after the Company shall have received notice that the same has become delinquent, (1) all material taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary, and (2) all material lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Company or any Material Subsidiary; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

#### SECTION 1007. STATEMENT BY OFFICERS AS TO DEFAULT.

(a) The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, a certificate of the principal executive officer, principal financial



73

knowledge of the signer thereof the Company is in default in the performance and observance of any of the terms, provisions, conditions or covenants of this Indenture, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

(b) The Company will deliver to the Trustee, forthwith upon becoming aware of any Event of Default or the occurrence of any event which, with the giving of notice by the Trustee or the required Holders as provided in Section 501(4) and lapse of time, would become an Event of Default under Section 501 hereof), an Officers' Certificate specifying such default or defaults.

SECTION 1008. WAIVER OF CERTAIN COVENANTS.

(a) The Company may omit in any particular instance to comply with any term, provision or condition set forth in Sections 1005, 1006 or 1007 with respect to the Securities of any series if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

(b) The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Persons entitled to waive any such term, provision or condition. If a record date is fixed, the Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to waive any such term, provision or condition hereunder, whether or not such Holders remain Holders after such record date; provided, that unless the Holders of at least a majority in principal amount of the Outstanding Securities of such series shall have waived such term, provision or condition prior to the date which is 90 days after such record date, any such waiver previously given shall automatically and without further action by any Holder be cancelled and of no further effect.

SECTION 1009. DEFEASANCE OF CERTAIN OBLIGATIONS.

Subject to Section 404, the Company may omit to comply with any term, provision or condition set forth in Sections 1005, 1006 or 1007 and Section 501(4) shall not be deemed to be an Event of Default with respect to any series of Securities, provided that the following conditions shall have been satisfied:

(1) The Company has deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 609), irrevocably (irrespective of whether the conditions in subparagraphs (2), (3), (4) and (5) below have been satisfied and except as provided in Section 402(c)), as trust funds in trust,

specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such series of Securities, with reference to this Section 1009, (i) money in an amount, (ii) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms, without regard to any reinvestment thereof, will provide not later than the close of business on the day prior to the date of any payment referred to in this subparagraph (1) money in an amount, or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the principal of (and premium, if any) and each installment of interest on such Outstanding Securities on the Stated Maturity of such principal or installment of interest on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities;

(2) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(3) no Event of Default or event which, after notice or lapse of time or both, would become an Event of Default shall have occurred and be continuing on the date of such deposit, and no Event of Default under Section 501(5) or 501(6) or event which, after notice or lapse of time or both, would become an Event of Default under Section 501(5) or 501(6) shall have occurred and be continuing on the 91st day after such date;

(4) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel to the effect that Holders of such Securities will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and defeasance of certain obligations and will be subject to Federal income tax on the same amounts and in the same manner and at the same times, as would have been the case if such deposit and defeasance had not occurred; and

(5) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the defeasance contemplated by this Section 1009 have been complied with.

#### SECTION 1010. APPLICABILITY OF COVENANTS.

Any series of Securities may provide, as contemplated by Section 301, that any one or more of the covenants set forth in Sections 1005 and 1006 shall not be applicable to the Securities of such series.

#### ARTICLE ELEVEN REDEMPTION OF SECURITIES

#### SECTION 1101. APPLICABILITY OF ARTICLE.

Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for Securities of any series) in accordance with this Article Eleven.

SECTION 1102. ELECTION TO REDEEM; NOTICE TO TRUSTEE.

The election of the Company to redeem any Securities shall be evidenced by a Board Resolution. In case of any redemption of any Securities at the election of the Company, the Company shall, at least 60 days (45 days in the case of redemption of all the Securities of any series) prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee at the time of the giving of notice of redemption to the Trustee with an Officers' Certificate evidencing compliance with such restriction.

SECTION 1103. SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED.

If less than all the Securities of any series are to be redeemed (unless all of the Securities of such series of a specified tenor are to be redeemed), the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption by pro rata or by lot or such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series. If less than all of the Securities of such series and of a specified tenor are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series and specified tenor not previously called for redemption in accordance with the preceding sentence.

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

The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

SECTION 1104. NOTICE OF REDEMPTION.

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

- (1) the Redemption Date, plus accrued interest, if any, or defaulted interest, if any;
- (2) the Redemption Price;
- (3) if less than all the Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amounts) of the particular Securities to be redeemed;
- (4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date;
- (5) the Conversion Price, if any, the date on which the right to convert the principal of the Securities to be redeemed will terminate and the place or places where such Securities may be surrendered for conversion, if applicable;
- (6) the place or places where such Securities are to be surrendered for payment of the Redemption Price; and
- (7) that the redemption is for a sinking fund, if such is the case; and
- (8) the CUSIP number of the Securities to be redeemed.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

66

77

SECTION 1105. DEPOSIT OF REDEMPTION PRICE.

On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on all the Securities which are to be redeemed on that date.

If any Security called for redemption is converted, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 307) be paid to the Company upon

Company Request or, if then held by the Company, shall be discharged from such trust.

SECTION 1106. SECURITIES PAYABLE ON REDEMPTION DATE.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; PROVIDED, HOWEVER, that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

SECTION 1107. SECURITIES REDEEMED IN PART.

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and 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 the same series, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. If a Global Security is so surrendered, the Company shall execute and the Trustee shall authenticate and deliver to the Depository, without service charge, a new Global Security in a denomination equal to and in exchange for the unredeemed portion of the principal of the Global Security so surrendered.

SECTION 1108. CONVERSION ARRANGEMENTS ON CALL FOR REDEMPTION.

Notwithstanding anything to the contrary contained in this Indenture, in connection with any redemption of Securities which are convertible in accordance with Article Seventeen, the Company, by an agreement with one or more investment bankers or other purchasers, may arrange for such purchasers to purchase all Securities called for redemption (the "Called Securities") which are either (i) surrendered for redemption, or (ii) not duly surrendered for redemption or conversion prior to the close of business on the Business Day prior to the Redemption Date, and to convert the same into shares of Common Stock, by the purchasers' depositing with the Trustee (acting as Paying Agent with respect to the deposit of such amount and as Conversion Agent with respect to the conversion of such Called Securities), in trust for the Holders of the Called Securities, on or prior to the Redemption Date in the manner agreed to by the Company and such purchasers, an amount sufficient to pay the Redemption

Price and accrued interest payable by the Company on redemption of such Called Securities. In connection with any such arrangement for purchase and conversion, the Trustee as Paying Agent shall pay on or after the Redemption Date such amounts so deposited by the purchasers in exchange for Called Securities surrendered for redemption prior to the close of business on the Redemption Date and for all Called Securities surrendered after such Redemption Date. Notwithstanding anything to the contrary contained in this Article Eleven, the obligation of the Company to pay the Redemption Price and accrued interest of such Called Securities shall be satisfied and discharged to the extent such amount is so paid by such purchasers; provided, however, that nothing in this Section 1108 shall in any way relieve the Company of the obligation to pay such Redemption Price on all Called Securities to the extent such amount is not so paid by said purchasers. For all purposes of this Indenture, any Called Securities surrendered by Holders for redemption, and any Called Securities not duly surrendered for redemption or conversion prior to the close of business on the Redemption Date, shall be deemed acquired by such purchasers from such Holders and surrendered by such purchasers for conversion and shall in all respects be deemed to have been converted, all as of immediately prior to the close of business on the Business Day prior to the Redemption Date, subject to the deposit by the purchasers of the above amount as aforesaid.

ARTICLE TWELVE  
SINKING FUNDS

SECTION 1201. APPLICABILITY OF ARTICLE.

The provisions of this Article Twelve shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 301 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "optional sinking fund payment". If provided for by the terms of Securities of any

68

79

series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

SECTION 1202. SATISFACTION OF SINKING FUND PAYMENTS WITH SECURITIES.

The Company (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series; provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through

operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

SECTION 1203. REDEMPTION OF SECURITIES FOR SINKING FUND.

Not less than 75 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 1202 and will also deliver to the Trustee any Securities to be so delivered. Not less than 60 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103. The Trustee shall cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1007.

ARTICLE THIRTEEN  
REPAYMENT AT THE OPTION OF HOLDERS

SECTION 1301. APPLICABILITY OF ARTICLE.

Unless otherwise provided with respect to Securities of any series in accordance with Section 301 hereof, Securities of any series which are repayable at the option of the Holders thereof before their Stated Maturity shall be repaid in accordance with the terms of the Securities of such series. The repayment of any principal amount of Securities pursuant to such option of

69

80

the Holder to require repayment of Securities before their Stated Maturity, for purposes of Section 309, shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Company, at its option, shall deliver or surrender the same to the Trustee with a directive that such Securities be cancelled. Notwithstanding anything to the contrary contained in this Section 1301, in connection with any repayment of Securities the Company may arrange for the purchase of any Securities by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Holders of such Securities on or before the close of business on the repayment date an amount not less than the repayment price payable by the Company on repayment of such Securities, and the obligation of the Company to pay the repayment price of such Securities shall be satisfied and discharged to the extent such payment is so paid by such purchasers.

ARTICLE FOURTEEN  
SECURITIES IN FOREIGN CURRENCIES

SECTION 1401. APPLICABILITY OF ARTICLE.

Unless otherwise provided with respect to Securities of any series in accordance with Section 301 hereof, whenever this Indenture provides for any distribution to Holders of Securities, in the absence of any provision to the



contrary in the form of Security of any particular series, any amount in respect of any Security denominated in a currency other than U.S.Dollars shall be treated for any such action or distribution as that amount of U.S.Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Securities of such series (if any) for such distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such distribution) as the Company may specify in a written notice to the Trustee.

ARTICLE FIFTEEN  
MEETINGS OF HOLDERS

SECTION 1501. PURPOSES OF HOLDERS' MEETINGS.

A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to the provisions of this Article Thirteen for any of the following purposes:

(1) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article Five;

70

81

(2) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article Six;

(3) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 902; or

(4) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Securities of such series under any other provision of this Indenture or under applicable law.

SECTION 1502. CALL OF MEETINGS BY TRUSTEE.

The Trustee may at any time call a meeting of Holders of Securities of any series to take any action specified in Section 1501, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given to Holders of Securities of such series in the manner provided in Section 106. Such notice shall be given not less than 20 nor more than 90 days prior to the date fixed for such meeting. Any failure by the Trustee to give such notice, or any defect therein, shall not affect or impair the validity of any action taken at such meeting.

Any meeting of Holders of Securities of any series shall be valid without notice if the Holders of all Outstanding Securities of such series are present in person or by proxy or if notice is waived before or after the meeting by all Holders of Outstanding Securities of such series who are not present in person or by proxy, and if the Company and the Trustee are either present by duly authorized representative or have, before or after the meeting,

waived notice.

SECTION 1503. CALL OF MEETINGS BY COMPANY OR HOLDERS.

In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in aggregate principal amount of the Outstanding Securities of any series shall have requested the Trustee to call a meeting of Holders of Securities of such series, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 1501, by giving notice thereof as provided in Section 1502.

SECTION 1504. QUALIFICATIONS FOR VOTING.

To be entitled to vote at any meetings of Holders of Securities of any series a Person shall (a) be a Holder of one or more Securities of such series or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Securities of such series. The only Persons who shall be

71

82

entitled to be present or to speak at any meeting of Holders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 1505. REGULATIONS.

Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by the Holders as provided in Section 1503, in which case the Company, or Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the Holders of Outstanding Securities and proxies.

At any meeting each Holder of Outstanding Securities or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities held or represented by him; provided, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Outstanding Securities held by him or instruments in writing as aforesaid duly designating him as the person to vote on behalf of other Holders. At any meeting of Holders duly called pursuant to the provisions of Section 1502 or 1503, the presence of persons holding or representing Securities in an aggregate principal amount sufficient to take any action on any business for the transaction of which such

meeting was called shall constitute a quorum. Any meeting of Holders duly called pursuant to the provisions of Section 1502 or 1503 may be adjourned from time to time by a majority of those present, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

SECTION 1506. VOTING.

The vote upon any resolution submitted to any meeting of Holders shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities or of their representatives by proxy and the principal amount of Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more

72

83

persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 1502. The record shall show the principal amount of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

SECTION 1507. RIGHTS OF TRUSTEE OR HOLDERS NOT DELAYED.

Nothing in this Article Thirteen contained shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Securities.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

ARTICLE SIXTEEN  
SUBORDINATION OF SECURITIES

SECTION 1601. AGREEMENT TO SUBORDINATE.

Notwithstanding anything in this Indenture to the contrary (other than Article Four of this Indenture), the Company covenants and agrees, and each Holder of a Security, by his acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article, the Indebtedness represented by the Securities and the payment of any Obligations with respect to each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness.

SECTION 1602. PAYMENT OVER OF PROCEEDS UPON DISSOLUTION, ETC.

In the event of (a) any insolvency or bankruptcy case or Proceeding, or any receivership, liquidation, reorganization or other similar case or Proceeding in connection therewith, relative to the Company or to its creditors, as such, or to its assets, or (b) any liquidation, dissolution or other winding up of the Company, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (c) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of the Company, then and in any such event specified in (a), (b) or (c) above (each such event, if any, herein sometimes referred to as a "Proceeding")

73

84

(1) the holders of Senior Indebtedness shall first be entitled to receive payment in full of all Obligations due or to become due on or in respect of all Senior Indebtedness, or provision shall be made for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Indebtedness, before the Holders of the Securities are entitled to receive any payment or distribution on account of principal of or premium, if any, or interest on or other Obligations in respect of the Securities or on account of any purchase, redemption or other acquisition of Securities by the Company or any Subsidiary (individually and collectively, a "Securities Payment"), and

(2) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (other than Capital Stock or securities of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinate, at least to the extent provided in this Article Sixteen with respect to the Securities, to the payment in full, without diminution or modification by such plan, of all Senior Indebtedness), to which the Holders would be entitled except for the provisions of this Article Sixteen, shall be paid by the liquidating trustee or agent or other person making such a payment or distribution, directly to the holders of Senior Indebtedness) (or their representative(s) or trustee(s) acting on their behalf), ratably according to the aggregate amounts remaining unpaid on account of the principal of or interest on and other amounts due on the Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

In the event that, notwithstanding the foregoing provisions of this Section 1601, the Trustee or the Holder of any Security shall have received any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (other than Capital Stock or securities of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinate, at least to the extent provided in this Article with respect to the Securities, to the payment in full, without diminution or modification by such plan, of Senior Indebtedness), before all Senior Indebtedness is paid in full or payment thereof provided for in cash or

cash equivalents or otherwise in a manner satisfactory to the holders of Senior Indebtedness, such payment or distribution shall be held in trust for the benefit of, and be paid over to, the holders of the Senior Indebtedness remaining unpaid (or their representative(s) or trustee(s) acting on their behalf), ratably as aforesaid, for application to the payment of such Senior Indebtedness until such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance or transfer of all or substantially all of its properties and assets as an entirety to another Person upon the terms and conditions set forth

74

85

in Article Eight shall not be deemed a Proceeding for the purposes of this Section 1602 if the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer such properties and assets as an entirety, as the case may be, shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions set forth in Article Eight.

SECTION 1603. NO PAYMENT WHEN SENIOR INDEBTEDNESS IN DEFAULT.

Anything in this Indenture to the contrary notwithstanding, no payment on account of principal of or redemption of, interest on or other amounts due on the Securities, and no redemption, purchase, or other acquisition of the Securities, shall be made by or on behalf of the Company (i) unless full payment of amounts then due for principal and interest and of all other obligations then due on all Senior Indebtedness has been made or duly provided for pursuant to the terms of the instrument governing such Senior Indebtedness, (ii) if, at the time of such payment, redemption, purchase or other acquisition, or immediately after giving effect thereto, there shall exist under any Senior Indebtedness, or any agreement pursuant to which any Senior Indebtedness is issued, any default, which default shall not have been cured or waived and which default shall have resulted in the full amount of such Senior Indebtedness being declared due and payable or (iii) if, at the time of such payment, redemption, purchase or other acquisition, the Trustee shall have received written notice from the holder or holders of any Senior Indebtedness or their representative or representatives (a "Payment Blockage Notice") that there exists under such Senior Indebtedness, or any agreement pursuant to which such Senior Indebtedness is issued, any default, which default shall not have been cured or waived, permitting the holders thereof to declare the full amount of such Senior Indebtedness due and payable, but only for the period (the "Payment Blockage Period") commencing on the date of receipt of the Payment Blockage Notice and ending (unless earlier terminated by notice given to the Trustee by the Holders of such Senior Indebtedness) on the earlier of (A) the date on which such event of default shall have been cured or waived or (B) 180 days from the receipt of the Payment Blockage Notice. Upon termination of a Payment Blockage Period, payments on account of principal of or interest on the Securities and redemptions, purchases or other acquisitions may be made by or on behalf of the Company. Notwithstanding anything herein to the contrary, (A) only one Payment Blockage Notice may be given during any period of 360 consecutive days with respect to the same event of default and any other events of default on the same issue of Senior Indebtedness existing and known to the person giving such notice at the time of such notice and (B) no new Payment

Blockage Period may be commenced by the holder or holders of the same issue of Senior Indebtedness or their representative or representatives during any period of 360 consecutive days unless all events of default which were the object of the immediately preceding Payment Blockage Notice, and any other event of default on the same issue of Senior Indebtedness existing and known to the person giving such notice at the time of such notice, have been cured or waived.

In the event that, notwithstanding the provisions of this Section 1603, payments are made by or on behalf of the Company in contravention of the provisions of this Section 1603, such payments shall be held by the Trustee, any Paying Agent or the Holders, as applicable, in trust for the benefit of,

75

86

and shall be paid over to and delivered to, the holders of Senior Indebtedness or their representative or the trustee under the indenture or other agreement (if any), pursuant to which any instruments evidencing any Senior Indebtedness may have been issued, as their respective interests may appear, for application to the payment of all Senior Indebtedness remaining unpaid to the extent necessary to pay all Senior Indebtedness in full in accordance with the terms of such Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness.

The provisions of this Section shall not apply to any payment with respect to which Section 1602 would be applicable.

SECTION 1604. RELIANCE BY SENIOR INDEBTEDNESS ON SUBORDINATION PROVISIONS. Each Holder of any Security by his acceptance thereof acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration for each holder of any Senior Indebtedness, whether such Senior Indebtedness was created or acquired before or after the issuance of the Securities, to acquire and continue to hold, or to continue to hold, such Senior Indebtedness, and such holder of Senior Indebtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold or in continuing to hold such Senior Indebtedness.

SECTION 1605. SUBROGATION TO RIGHTS OF HOLDERS OF SENIOR INDEBTEDNESS.

Subject to the payment in full of all Obligations due or to become due on or in respect of Senior Indebtedness, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Indebtedness, 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 Sixteen to the rights of the holders of such Senior Indebtedness to receive payments and distributions of cash, property and securities applicable to the Senior Indebtedness until the principal of and premium, if any, and interest on the Securities shall be paid in full. For 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 Sixteen, and no payments over pursuant to the provisions of this Article Sixteen to the holders of Senior Indebtedness by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders of the Securities, be deemed to be a payment or



distribution by the Company to or on account of the Senior Indebtedness.

SECTION 1606. PROVISIONS SOLELY TO DEFINE RELATIVE RIGHTS.

The provisions of this Article Sixteen are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Indebtedness on the other hand. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders of the Securities, the

76

87

obligation of the Company, which is absolute and unconditional (and which, subject to the rights under this Article Sixteen of the holders of Senior Indebtedness, is intended to rank equally with all other general obligations of the Company), to pay to the Holders of the Securities the principal of and premium, if any, and interest on the Securities as and when the same shall become due and payable in accordance with their terms; or (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than the holders of Senior Indebtedness; or (c) 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 of the holders of Senior Indebtedness to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 1607. TRUSTEE TO EFFECTUATE SUBORDINATION.

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

SECTION 1608. NO WAIVER OF SUBORDINATION PROVISIONS.

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 any



representative or trustee therefor, or by any non-compliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness may, at any time from time to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to the Holders of the Securities and without

77

88

impairing or releasing the subordination provided in this Article Sixteen or the obligations hereunder of the Holders of the Securities to the holders of Senior Indebtedness, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Indebtedness, or otherwise amend or supplement in any manner Senior Indebtedness or any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness; (iii) release any Person liable in any manner for the collection of Senior Indebtedness and settle or compromise Senior Indebtedness (which, to the extent so settled and compromised, shall be deemed to have been paid in full for all purposes hereof); (iv) apply any amounts received to any liability of the Company owing to holders of Senior Indebtedness; and (v) exercise or refrain from exercising any rights against the Company and any other Person.

#### SECTION 1609. NOTICE TO TRUSTEE.

The Company shall give prompt written notice to the Trustee of any default or event of default with respect to any Senior Indebtedness or of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Securities pursuant to the provisions of this Article Sixteen. Notwithstanding the provisions of this Article Sixteen 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 to or by the Trustee in respect of the Securities, unless and until the Trustee shall have received written notice thereof from the Company or a holder of Senior Indebtedness or from any representative or trustee acting on their behalf; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 601, shall be entitled in all respects to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section at least three Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of and premium, if any, or interest on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it within three Business Days prior to such date. Nothing contained in this Article Sixteen or any other Article of this Indenture or in any of the Securities shall prevent (a) the Company, at any time except during the pendency of any Proceeding, or under the conditions described in Section 1603, from making payments at any time in respect of the Securities, or (b) the application by the Trustee of any money deposited with it hereunder to the payment of or on account of the Securities, or the retention thereof by any Holder, if the Trustee did not have notice, as

provided in this Section 1609, that such payment would have been prohibited by the provisions of this Article Sixteen.

Subject to the provisions of Section 601, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness (or a representative

78

89

or trustee therefor) to establish that such notice has been given by a holder of Senior Indebtedness (or a trustee therefor). 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 Sixteen, 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 Sixteen, 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 1610. RELIANCE ON JUDICIAL ORDER OR CERTIFICATE OF LIQUIDATING AGENT.

Upon any payment or distribution of assets of the Company referred to in this Article Sixteen, the Trustee, subject to the provisions of Section 601, and the Holders of the Securities shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which any Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

SECTION 1611. TRUSTEE NOT FIDUCIARY FOR HOLDERS OF SENIOR INDEBTEDNESS.

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness. Nothing contained in this Article Sixteen or elsewhere in this Indenture, or in any of the Securities, shall prevent the application by the Trustee of any moneys which were deposited with it hereunder, prior to its receipt of written notice of facts which would prohibit such application, for the purpose of the payment of or on account of the principal of or interest on, the Securities unless, prior to the date on which such application is made by the Trustee, the Trustee shall be charged with notice under Section 1609 hereof of the facts which would prohibit the making of such application.

SECTION 1612. RIGHTS OF TRUSTEE AS HOLDER OF SENIOR INDEBTEDNESS; PRESERVATION OF TRUSTEE'S RIGHTS.

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article Sixteen with respect to any Senior Indebtedness which may at any time be held by it, to the same extent as any

other holder of Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder. Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 607.

79

90

SECTION 1613. ARTICLE APPLICABLE TO PAYING AGENTS.

In case 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 Sixteen shall in such case (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 Section 1612 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

ARTICLE SEVENTEEN  
CONVERSION OF SECURITIES

SECTION 1701. APPLICABILITY OF ARTICLE; CONVERSION PRIVILEGE AND CONVERSION PRICE.

Securities of any series which are convertible shall be convertible in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for Securities of any series) in accordance with this Article Seventeen. Subject to and upon compliance with the provisions of this Article Seventeen, at any time during the period specified in the Securities, at the option of the Holder thereof, any Security or any portion of the principal amount thereof which is \$1,000 or an integral multiple of \$1,000 may be converted at the principal amount thereof, or of such portion thereof, into fully paid and nonassessable shares (calculated as to each conversion to the nearest 1/100 of a share) of Common Stock of the Company, at the Conversion Price, determined as hereinafter provided, in effect at the time of conversion. In case a Security or portion thereof is called for redemption, such conversion right in respect of the Security or portion so called shall expire at the close of business on the Business Day immediately preceding the Redemption Date, unless the Company defaults in making the payment due upon redemption, in which case such conversion right shall terminate on the date such default is cured.

The price at which shares of Common Stock shall be delivered upon conversion (herein called the "Conversion Price") of Securities of any series shall be specified in such Securities. The Conversion Price shall be adjusted in certain instances as provided in Section 1704.

In case the Company shall, by dividend or otherwise, declare or make a distribution on its Common Stock referred to in paragraph (4) of Section 1704, the Holder of each Security, upon the conversion thereof pursuant to this Article Seventeen subsequent to the close of business on the date fixed for the determination of stockholders entitled to receive such distribution and prior to the effectiveness of the Conversion Price adjustment in respect of such distribution pursuant to paragraph (4) of Section 1704, shall be entitled to receive for each share of Common Stock into which such Security is converted, the portion of the evidence of indebtedness, shares of Capital Stock or assets so distributed applicable to one share of Common Stock; provided, however,

91

Board Resolution filed with the Trustee) with respect to all Holders so converting, the Company may, in lieu of distributing to such Holder any portion of such distribution not consisting of cash or securities of the Company, pay such Holder an amount in cash equal to the fair market value thereof (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution filed with the Trustee). If any conversion of a Security entitled to the benefits described in the immediately preceding sentence occurs prior to the payment date for a distribution to holders of Common Stock which the Holder of the Security so converted is entitled to receive in accordance with the immediately preceding sentence, the Company may elect (such election to be evidenced by a Board Resolution filed with the Trustee) to distribute to such Holder a due bill for the evidences of indebtedness, shares of Capital Stock or assets to which such Holder is so entitled, provided that such due bill (i) meets any applicable requirements of the principal national securities exchange or other market on which the Common Stock is then traded, and (ii) requires payment or delivery of such evidences of indebtedness or assets no later than the date of payment or delivery thereof to holders of Common Stock receiving such distribution.

SECTION 1702. EXERCISE OF CONVERSION PRIVILEGE.

In order to exercise the conversion privilege, the Holder of any Security to be converted shall surrender such Security, duly endorsed or assigned to the Company or in blank, at any office or agency maintained by the Company pursuant to Section 1002, accompanied by written notice to the Company at such office or agency that the Holder elects to convert such Security or, if less than the entire principal amount thereof is to be converted, the portion thereof to be converted and shall comply with any additional requirements set forth in such Security. Securities surrendered for conversion during the period from the close of business on any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date shall (except for Securities the Maturity of which is prior to such Interest Payment Date) be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of Securities being surrendered for conversion and such interest shall be paid on such Interest Payment Date as provided in Section 307. Except as provided in the preceding sentence, no payment or adjustment shall be made upon any conversion on account of any interest accrued on the Securities surrendered for conversion or on account of any dividends on the Common Stock issued upon conversion.

The Company's delivery to the Holder of the fixed number of shares of the Common Stock of the Company (and any cash in lieu of any fractional share of Common Stock) into which the Security is convertible shall be deemed to satisfy the Company's obligation to pay the principal amount of the Security and all accrued interest and original issue discount that has not previously been paid. The shares of Common Stock of the Company so delivered shall be treated as issued first in payment of accrued interest and original issue discount and then in payment of principal. Thus, accrued interest and original issue discount shall be treated as paid, rather than cancelled, extinguished or forfeited.

Securities shall be deemed to have been converted immediately prior to the close of business on the day of surrender of such Securities for conversion in accordance with the foregoing provisions, and at such time the rights of the Holders of such Securities as Holders shall cease, and the Person or Persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the conversion date, the Company shall issue and shall deliver at such office or agency a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, together with payment in lieu of any fraction of a share, as provided in Section 1703.

In the case of any Security which is converted in part only, as promptly as practicable on or after the conversion date the Company shall execute and the Trustee shall authenticate and make available for delivery to the Holder thereof (or the Depositary in the case of a Global Security), at the expense of the Company, a new Security or Securities, of authorized denominations in aggregate principal amount equal to the unconverted portion of the principal amount of such Security.

#### SECTION 1703. FRACTIONS OF SHARES.

No fractional shares of Common Stock shall be issued upon conversion of Securities. If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares of Common Stock which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock which would otherwise be issuable upon conversion of any Security or Securities (or specified portions thereof), the Company shall pay a cash adjustment (rounded to the nearest cent) in respect of such fraction in an amount equal to the same fraction of the Closing Price per share of the Common Stock on the day of conversion (or, if such day is not a Trading Day, on the Trading Day immediately preceding such day).

#### SECTION 1704. ADJUSTMENT OF CONVERSION PRICE.

The Conversion Price shall be subject to adjustment from time to time as follows:

(1) If the Company pays or makes a dividend or other distribution (a) on its Common Stock exclusively in Common Stock or (b) on any other class of Capital Stock of the Company, which dividend or distribution includes Common Stock of the Company, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution (the "Dividend Record Date") shall be reduced by multiplying such Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock of the Company outstanding at the close of business on the Dividend Record Date and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution. Such reduction shall become effective immediately after

the opening of business on the day following the date fixed for such determination. For the purposes of this paragraph (1), the number of shares of Common Stock of the Company at any time outstanding shall not include shares held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company shall not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(2) Subject to paragraph (6) of this Section, if the Company pays or makes a dividend or other distribution on its Common Stock consisting exclusively of Short Term Rights (as defined below), or otherwise issues Short Term Rights to all holders of its Common Stock, the Conversion Price in effect at the opening of business on the day following the record date for the determination of holders of Common Stock entitled to receive such Short Term Rights (the "Rights Record Date") shall be reduced by multiplying such Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock of the Company outstanding at the close of business on the Rights Record Date plus the number of shares of Common Stock of the Company which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription or purchase would purchase at such current market price and the denominator shall be the number of shares of Common Stock of the Company outstanding at the close of business on the Rights Record Date plus the number of shares of Common Stock so offered for subscription or purchase. Such reduction shall become effective immediately after the opening of business on the day following the Rights Record Date. For the purposes of this paragraph (2), the number of shares of Common Stock of the Company at any time outstanding shall not include shares held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock of the Company. The Company shall not issue any rights, options or warrants in respect of shares of its Common Stock held in the treasury of the Company. When used in this Section 1704, the term "Short Term Rights" shall mean rights, warrants or options entitling the holders thereof (for a period commencing no earlier than the Rights Record Date and expiring not more than 45 days after the Rights Record Date) to subscribe for or purchase shares of Common Stock of the Company at a price per share less than the current market price per share (determined as provided in paragraph (7) of this Section 1704) of the Common Stock of the Company on the Rights Record Date.

(3) In case outstanding shares of Common Stock of the Company shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and, conversely, in case outstanding shares of Common Stock of the Company shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately

increased, such reduction or increase, as the case may be, to become



effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(4) Subject to the last sentence of this paragraph (4) of this Section, if the Company, by dividend or otherwise, (a) distributes to all holders of its Common Stock evidences of its indebtedness, shares of any class of Capital Stock of the Company or other assets (other than cash dividends out of current or retained earnings), or (b) distributes to substantially all holders of Common Stock rights or warrants to subscribe for securities (other than Short Term Rights to which paragraph (2) of this Section 1704 applies), the Conversion Price shall be reduced by multiplying such Conversion Price by a fraction of which the numerator shall be the current market price per share (determined as provided in paragraph (7) of this Section 1704) of the Common Stock of the Company on the Reference Date (as defined below) less the fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution filed with the Trustee), on the Reference Date, of the portion of the evidences of indebtedness and other assets so distributed or of such subscription rights or warrants applicable to one share of Common Stock (collectively, the "Market Value of the Distribution") and the denominator shall be such current market price per share of the Common Stock of the Company. Such reduction shall become effective immediately prior to the opening of business on the day (the "Reference Date") following the later of (a) the date fixed for the payment of such distribution and (b) the date 20 days after notice relating to such distribution is required to be given pursuant to Section 1706(a). If the Board of Directors determines the fair market value of any distribution for purposes of this paragraph (4) by reference to the actual or when issued trading market for any securities comprising such distribution, it must in doing so consider the prices in such market over the same period used in computing the current market price per share pursuant to paragraph (7) of this Section 1704. In the event that, with respect to any distribution to which this paragraph (4) of Section 1704 would otherwise apply, the Market Value of the Distribution is greater than the current market price per share of the Common Stock (such distribution being referred to herein as an "Unadjusted Distribution"), then the adjustment provided by this paragraph (4) shall not be made and in lieu thereof the provisions of Section 1711 shall apply with respect to such Unadjusted Distribution.

(5) The Company may, but shall not be required to, make such reductions in the Conversion Price, in addition to those required by paragraphs (1), (2), (3), and (4) of this Section 1704, as it considers to be advisable in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights shall not be taxable to the recipients. In addition, the Company, from time to time, may decrease the Conversion Price by any amount and for any reason, temporarily or otherwise, including situations where the Board of Directors determines such decrease to be fair and appropriate with respect to transactions in which holders of Common Stock have the right to participate.



(6) Rights or warrants issued or distributed by the Company to all holders of its Common Stock entitling the holders thereof to subscribe for or purchase shares of Common Stock or Preferred Stock, which rights or warrants (i) are deemed to be transferred with such shares of Common Stock, (ii) are not exercisable and (iii) are also issued or distributed in respect of future issuances of Common Stock, in each case in clauses (i) through (iii) until the occurrence of a specified event or events ("Trigger Events"), shall for purposes of this Section 1704 not be deemed issued or distributed until the occurrence of the earliest Trigger Event. Each share of Common Stock issued upon conversion of Securities pursuant to this Article Seventeen shall be entitled to receive the appropriate number of Common Stock purchase rights (the "Rights"), if any, and the certificates representing the Common Stock issued upon conversion shall bear such legends, if any, in each case as provided by and subject to the terms of the Stockholders Rights Plan adopted by the Board of Directors on December 11, 1989 (the "Rights Plan") as in effect at the time of such conversion. Notwithstanding anything to the contrary in this Article Seventeen, there shall not be any adjustment to the Conversion Price as a result of (i) the distribution of separate certificates representing the Rights; (ii) the occurrence of certain events entitling holders of Rights to receive, upon exercise thereof, Common Stock or other securities of the Company or other securities of another corporation; or (iii) the exercise of such Rights, all in accordance with the Rights Plan. No adjustment in the Conversion Price need be made for rights to purchase or the sale of Common Stock pursuant to a Company plan providing for reinvestment of dividends or interest.

(7) For the purpose of any computation under paragraph (2), (4) or (5) of this Section 1704, the "current market price" per share of Common Stock of the Company on any date shall be deemed to be the average of the daily Closing Prices for the 15 consecutive Trading Days selected by the Company commencing not more than 30 Trading Days before, and ending not later than, the date in question.

(8) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Price; provided, however, that any adjustments which by reason of this paragraph (9) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article Seventeen shall be made to the nearest cent or to the nearest one-hundredth of a share of Common Stock, as the case may be.

(9) Anything herein to the contrary notwithstanding, in the event the Company shall declare any dividend or distribution requiring an adjustment in the Conversion Price hereunder and shall, thereafter and before the payment of such dividend or distribution to stockholders, legally abandon its plan to pay such dividend or distribution, the Conversion Price then in effect hereunder, if changed to reflect such dividend or distribution, shall upon the legal abandonment of such plan be changed to the Conversion Price which would have been in effect at the time of such abandonment (after giving effect to all other adjustments not so legally abandoned

pursuant to the provisions of this Article Seventeen) had such dividend or distribution never been declared.

(10) Notwithstanding any other provision of this Section 1704, no adjustment to the Conversion Price shall reduce the Conversion Price below the then par value per share of the Common Stock of the Company, and any such purported adjustment shall instead reduce the Conversion Price to such par value. Notwithstanding the foregoing sentence, the Company hereby covenants that it will from time to time take all such action as may be required to assure that the par value per share of the Common Stock is at all times equal to or less than the Conversion Price.

(11) In the event that this Article Seventeen requires adjustments to the Conversion Price under more than one of paragraphs (1), (2), (3) or (4) of this Section 1704, and the record or effective dates for the transaction giving rise to such adjustments shall occur on the same date, then such adjustments shall be made by applying (to the extent they are applicable), first, the provisions of paragraph (3) of this Section 1704, second, the provisions of paragraph (1) of this Section 1704, third, the provisions of paragraph (4) of this Section 1704 and, fourth, the provisions of paragraph (2) of this Section 1704. Anything herein to the contrary notwithstanding, no single event shall require or result in duplicative adjustments in the Conversion Price pursuant to this Section 1704. After an adjustment to the Conversion Price under this Article Seventeen, any subsequent event requiring an adjustment under this Article Seventeen shall cause an adjustment to the Conversion Price as so adjusted. If, after an adjustment, a Holder of a Security upon conversion of such Security receives shares of two or more classes of Capital Stock of the Company, the Conversion Price shall thereafter be subject to adjustment upon the occurrence of an action taken with respect to any such class of Capital Stock as is contemplated by this Article Seventeen with respect to the Common Stock in this Article Seventeen.

#### SECTION 1705. NOTICE OF ADJUSTMENTS OF CONVERSION PRICE.

Whenever the Conversion Price is adjusted as herein provided:

(1) the Company shall compute the adjusted Conversion Price in accordance with Section 1704 or Section 1711 and shall prepare an Officer's Certificate setting forth the adjusted Conversion Price and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed (with a copy to the Trustee) at each office or agency maintained for the purpose of conversion of any Securities pursuant to Section 1002; and

(2) a notice stating that the Conversion Price has been adjusted and setting forth the adjusted Conversion Price shall forthwith be required, and as soon as practicable after it is required, such notice shall be mailed by the Company to all Holders at their last addresses as they shall appear in the Security Register.

#### SECTION 1706. NOTICE OF CERTAIN CORPORATE ACTION.

In case:

(1) the Company shall take any action that would require a Conversion Price adjustment pursuant to Section 1704 or Section 1711; or

(2) there shall occur any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding shares of Common Stock), or any consolidation or merger to which the Company is a party, or the sale, transfer or lease of all or substantially all of the assets of the Company and for which approval of any stockholders of the Company is required; or

(3) there shall occur the voluntary or involuntary dissolution, liquidation or winding up of the Company,

then the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of Securities pursuant to Section 1002, and shall cause to be mailed to all Holders at their last addresses as they shall appear in the Security Register, at least 10 days prior to the applicable record, effective or expiration date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of any dividend, distribution or granting of rights, warrants or options, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights, options or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective, and, if applicable, the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

#### SECTION 1707. COMPANY TO RESERVE COMMON STOCK.

The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Securities, a number of shares of Common Stock for the conversion of all outstanding Securities of any series which is convertible into Common Stock.

#### SECTION 1708. TAXES ON CONVERSION.

The Company will pay any and all taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Securities pursuant hereto. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Security or Securities to be converted, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the

87

98  
Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid.

#### SECTION 1709. COVENANTS AS TO COMMON STOCK.

The Company covenants that all shares of Common Stock which may be issued upon conversion of Securities will upon issue be duly and validly issued, fully paid and nonassessable, free of preemptive or any similar rights, and, except as provided in Section 1708, the Company will pay all taxes, liens and charges with respect to the issue thereof.

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 in the over-the-counter market or such other market on which the Common Stock is then listed or quoted.

SECTION 1710. CANCELLATION OF CONVERTED SECURITIES.

All Securities delivered for conversion shall be delivered to the Trustee to be cancelled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 309.

SECTION 1711. PROVISIONS IN CASE OF CONSOLIDATION, MERGER OR SALE OF ASSETS; SPECIAL DISTRIBUTIONS.

If any of the following shall occur, namely: (i) any reclassification or change of outstanding shares of Common Stock issuable upon conversion of Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any consolidation or merger to which the Company is a party other than a merger in which the Company is the continuing corporation and which does not result in any reclassification of, or change (other than a change in name, or par value, or from par value to no par value, or from no par value to par value or as a result of a subdivision or combination) in, outstanding shares of Common Stock or (iii) any sale or conveyance of all or substantially all of the property or business of the Company as an entirety, then the Person formed by such consolidation or resulting from such merger or which acquires such properties or assets, as the case may be, shall as a condition precedent to such transaction execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then outstanding shall have the right thereafter, during the period such Security shall be convertible as specified in Section 1701, to convert such Security only into the kind and amount of securities, cash and other property receivable, if any, upon such consolidation, merger, sale, transfer or lease by a holder of the number of shares of Common Stock of the Company into which such Security might have been converted immediately prior to such consolidation, merger, sale, transfer or lease; provided that the kind and amount of securities, cash and other property so receivable shall be determined on the

basis of the following assumptions. The holder of Common Stock referred to in the foregoing sentence:

- (1) is not (a) a Person with which the Company consolidated, (b) a Person into which the Company merged or which merged into the Company, or (c) a Person to which such sale, transfer or lease was made (any Person described in the foregoing clauses (a), (b), or (c), hereinafter referred to as a "Constituent Person"), or (d) an Affiliate of a Constituent Person; and

(2) failed to exercise his rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such consolidation, merger, sale, transfer or lease (provided that if the kind or amount of securities, cash and other property receivable upon such consolidation, merger, sale transfer or lease is not the same for each share of Common Stock of the Company in respect of which such rights of election shall not have been exercised, then for the purpose of this Section 1711 the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale, transfer or lease shall be deemed to be the kind and amount so receivable per share by a plurality of such shares of Common Stock).

Such supplemental indenture shall provide for adjustments which, for events subsequent to the effective date of such supplemental indenture, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article Seventeen. If, in the case of any such consolidation, merger, sale transfer or lease the stock or other securities and property (including cash) receivable thereupon by a holder of Common Stock includes shares of stock or other securities and property of a corporation other than the successor or purchasing corporation, as the case may be, in such consolidation, merger, sale, transfer or lease then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors of the Company shall reasonably consider necessary by reason of the foregoing. The above provisions of this Section 1711 shall similarly apply to successive consolidations, mergers, sales, transfers or leases.

In the event the Company shall execute a supplemental indenture pursuant to this Section 1711, the Company shall promptly file with the Trustee an Officers' Certificate briefly stating the reasons therefor, the kind or amount of shares of stock or securities or property (including cash) receivable by Holders of the Securities upon the conversion of their Securities after any such reclassification, change, consolidation, merger, sale, transfer or lease and any adjustment to be made with respect thereto.

If the Company makes a distribution to all holders of its Common Stock that constitutes an Unadjusted Distribution pursuant to the last sentence of

paragraph (4) of Section 1704, then, from and after the record date for determining the holders of Common Stock entitled to receive such distribution (the "Distribution Record Date"), a Holder of a Security who converts such Security in accordance with the provisions of this Indenture shall, upon conversion, be entitled to receive, in addition to the shares of Common Stock into which the Security is convertible, the kind and amount of evidences of indebtedness, shares of Capital Stock, or other assets or subscription rights or warrants, as the case may be, comprising the distribution that such Holder would have received if such Holder had converted the Security immediately prior to the Distribution Record Date.

SECTION 1712. TRUSTEE ADJUSTMENT DISCLAIMER; COMPANY DETERMINATION FINAL.

The Trustee has no duty to determine when an adjustment under this Article Seventeen should be made, how it should be made or what it should be. The Trustee has no duty to determine whether a supplemental indenture under

Section 1711 need be entered into or whether any provisions of any supplemental indenture are correct. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities. The Trustee shall not be responsible for the Company's failure to comply with this Article Seventeen. Any determination that the Company or the Board of Directors must make pursuant to this Article Seventeen is conclusive, absent manifest error.

SECTION 1713. WHEN NO ADJUSTMENT REQUIRED.

(a) Except as expressly set forth in Section 1704, no adjustment in the Conversion Price shall be made because the Company issues, in exchange for cash, property or services, shares of its Common Stock, or any securities convertible into or exchangeable for shares of its Common Stock, or securities (including warrants, rights and options) carrying the right to subscribe for or purchase shares of its Common Stock or such convertible or exchangeable securities.

(b) Notwithstanding anything herein to the contrary, no adjustment in the Conversion Price shall be made pursuant to Section 1704 in respect of any dividend or distribution if the Holders may participate therein (on a basis to be determined in good faith by the Board of Directors) and receive the same consideration they would have received if they had converted the Securities immediately prior to the record date with respect to such dividend or distribution.

SECTION 1714. EQUIVALENT ADJUSTMENTS.

In the event that, as a result of an adjustment made pursuant to Section 1704 above, the holder of any Security thereafter surrendered for conversion shall become entitled to receive any shares of Capital Stock of the Company other than shares of its Common Stock, thereafter the Conversion Price of such other shares so receivable upon conversion of any Securities shall be subject to adjustment from time to time in a manner and on terms as nearly

90

101  
equivalent as practicable to the provisions with respect to Common Stock contained in this Article Seventeen.

ARTICLE EIGHTEEN  
EXCHANGE OF SECURITIES

SECTION 1801. APPLICABILITY OF ARTICLE; RIGHT OF EXCHANGE.

Securities of any series which are exchangeable shall be exchangeable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for Securities of any series or as specified in such Securities) in accordance with this Article Eighteen. Subject to and upon compliance with the provisions of this Article Eighteen and the Securities, at the option of the Holder, any Security or any portion of the principal amount thereof which is \$1,000 or an integral multiple of \$1,000 may, at any time during the period specified in the Securities, be exchanged for fully paid and non-assessable Exchange Securities (and cash and other property in certain events or cash at the Company's option, pursuant to Section 1814) at the Exchange Rate provided. In case a Security or portion thereof is called for redemption, such right of exchange in respect of the Security or portion so



called shall expire at the close of business on the day preceding the Redemption Date or, in the case of Securities called for redemption in accordance with Section 1811, at the close of the business on the fourteenth day after the date of notice of redemption is mailed, unless the Company defaults in making the payment due upon redemption, in which case such right of exchange shall terminate on the date such default is cured.

The rate at which Exchange Securities shall be delivered upon exchange (herein called the "Exchange Rate") of Securities of any series shall be specified in such Securities. The Exchange Rate shall be subject to adjustment as provided in Sections 1804, 1805, 1810 and 1813.

#### SECTION 1802. METHOD OF EXCHANGE.

In order to exercise the right of exchange, the Holder of any Security to be exchanged shall surrender such Security to the Escrow Agent at the office or agency maintained for that purpose pursuant to Section 1002, accompanied by written notice to the Company and the Escrow Agent that the Holder elects to exchange such Security or, if less than the entire principal amount of a Security is to be exchanged, the portion thereof to be exchanged. Such notice shall also state the name or names (with addresses) in which the certificate or certificates for Exchange Securities which shall be issuable on such exchange shall be issued. Securities surrendered for exchange shall be accompanied (if so required by the Company or Escrow Agent) by proper assignments thereof to the Company or in blank for transfer.

If the Company does not elect to deliver cash in lieu of Exchange Securities pursuant to Section 1815 hereof, as promptly as practicable after the receipt of such notice and the proper surrender of such Security as aforesaid (subject, however, to the following paragraph of this Section 1802 and to Section 1815), the Company shall deliver or cause the Escrow Agent to

91

102

deliver at said office or agency to such Holder, or on his written order, a certificate or certificates for the number of full Exchange Securities deliverable upon the exchange of any such Security (or specified portion thereof) and a check for any cash apportioned thereto and provision shall be made for any fraction of a share as provided in Section 1803. Such exchange shall be deemed to have been effected immediately prior to the close of business on the date on which such notice shall have been received by the Company and the Escrow Agent and such Security shall have been properly surrendered as aforesaid, and at such time the rights of the Holder of such Security as a Holder shall cease and the person or persons in whose name or names any certificate or certificates for Exchange Securities shall be deliverable upon such exchange shall, as between such person or persons and the Company, be deemed to have become the holder or holders of record of the shares represented thereby.

Delivery of such certificate or certificates and of any check for any cash apportioned thereto and for cash in lieu of fractional shares may be delayed for a reasonable period of time at the request of the Company (which shall be made by an Officers' Certificate) in order to effectuate the calculation of the adjustments of the Exchange Securities and cash apportioned thereto pursuant to this Article Eighteen, to obtain any certificate representing securities to be delivered or to complete any reapportionment of the Exchange Securities, cash and other property apportioned thereto which is required by this Article Eighteen. If, between any date an exchange under this



Section is deemed effected and delivery of the applicable security or securities, such security or securities shall cease to have any or certain rights or there shall occur a record date or effective date of a transaction to which Section 1804, 1805 or 1810 applies, the person entitled to receive such security or securities shall be entitled only to receive such security or securities as so modified and any proceeds received thereon on or after the date and time on which such an exchange is deemed effected. The Company, the Trustee and the Escrow Agent shall not otherwise be liable with respect to the modification, from the date such an exchange is deemed effected to the date of such delivery, of such security or securities.

Except as otherwise expressly provided in this Indenture or in Securities of any series, no payment or adjustment shall be made upon any exchange on account of any interest accrued on the Securities surrendered for exchange or on account of any dividends on the Exchange Securities delivered upon such exchange.

In the case of any Security which is exchanged in part only, upon such exchange the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof (or the Depositary in case of a Global Security), at the expense of the Company (except for transfer taxes in the case that the new Security is to be registered in a name different than that in which the old Security was issued), a new Security or Securities of authorized denominations in principal amount equal to the unexchanged portion of the principal amount of such Security.

92

103

#### SECTION 1803. FRACTIONAL INTERESTS.

No fractional Exchange Securities shall be delivered upon exchange of Securities. If more than one Security shall be surrendered for exchange at one time by the same Holder, the number of full shares which shall be delivered upon exchange shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof to the extent permitted hereby) so surrendered. Instead of any fractional share which would otherwise be deliverable upon exchange of any Security or Securities (or specified portions thereof), the Escrow Agent on behalf of the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to the same fraction of the Market Price per share of the Exchange Securities on the Business Day next preceding the date of exchange. The Escrow Agent shall obtain the funds for payment of such fractional interests by (i) the sale of Exchange Securities held by it, to the extent that after such sale the Exchange Securities remaining on deposit with the Escrow Agent shall be sufficient to allow the exchange of all outstanding Securities of that series for Exchange Securities on the basis of the then applicable Exchange Rate or (ii) at the option of the Company, sufficient cash contributions from the Company. The Company agrees to furnish any additional moneys required to permit such payment.

#### SECTION 1804. ADJUSTMENT OF EXCHANGE RATE.

The Exchange Rate shall be subject to adjustment as follows:

(1) In the event the issuer of Exchange Securities shall, (i) pay a dividend on the Exchange Securities in Exchange Securities, (ii) subdivide outstanding Exchange Securities into a greater number of Exchange Securities,

(iii) combine outstanding Exchange Securities into a smaller number of Exchange Securities, or (iv) issue, by reclassification of Exchange Securities, any shares of its Capital Stock (which in any such case shall apply to the Exchange Securities held by the Escrow Agent under the Escrow Agreement), the Exchange Rate in effect immediately prior thereto shall be proportionately adjusted so that the Holder of any Securities thereafter surrendered for exchange shall be entitled (subject to Section 1814 hereof) to receive the number and kind of Exchange Securities (in addition to any cash apportionment thereto) which he would have owned or have been entitled to receive after the happening of any of the events described above had such Securities been exchanged immediately prior to the record date (or if there is no record date, the effective date) of such event. Such adjustments shall be made whenever any of the events listed above shall occur and shall become effective as of immediately after the close of business on the record date in the case of a stock dividend and shall become effective as of immediately after the close of business on the effective date in the case of a subdivision or combination or reclassification. Any Holder surrendering any Securities after such record date or such effective date, as the case may be, shall be entitled to receive Exchange Securities at the Exchange Rate as so adjusted pursuant to this Section 1804 (1) (subject to Section 1813 hereof), in addition to any cash apportioned thereto.

93

104

(2) Notwithstanding the foregoing provisions, no adjustment in the Exchange Rate shall be required unless such adjustment would require an increase or decrease in such Exchange Rate of more than 1%; provided, however, that any adjustments which by reason of this paragraph (2) are not required to be made shall be carried forward and taken into account in any subsequent adjustment.

(3) All calculations under this Section 1804 shall be made to the nearest one-ten-thousandth (.0001) of a share.

(4) Whenever the Exchange Rate is adjusted as herein provided, the Company shall determine the adjusted Exchange Rate in accordance with this Section 1804 and shall prepare a certificate setting forth such adjusted Exchange Rate and any cash and other property apportioned to the Exchange Securities and showing in detail the facts upon which such adjustments are based, and such certificate shall forthwith be filed with the Trustee and the Escrow Agent and a notice stating the Exchange Rate has been adjusted and setting forth the adjusted Exchange Rate and any cash or other property apportioned to the Exchange Securities shall as soon as practicable be mailed by or on behalf of the Company to the Holders at their last addresses as they shall appear in the Security Register.

#### SECTION 1805. ESCROW AGREEMENT.

(1) Simultaneously with or prior to the execution and delivery of Securities of any series which are exchangeable as provided in this Article Eighteen, the Company will enter into an Escrow Agreement with the Escrow Agent, pursuant to which the Company will deposit with the Escrow Agent Exchange Securities. The Escrow Agent shall be the Exchange Agent for the exchange of Securities of such series for the Exchange Securities as the Holders of all outstanding Securities of such series shall from time to time be entitled to receive pursuant to this Article Eighteen upon exchange thereof.

(2) The Company shall be entitled to (i) interest payments on any debt securities included in the Exchange Securities which Holders of Securities

may be entitled to receive on exchange hereunder and (ii) cash dividends paid on the Exchange Securities held by the Escrow Agent. The Escrow Agent shall retain and apply as hereinafter provided all cash dividends paid on securities other than the Exchange Securities held by the Escrow Agent under the Escrow Agreement.

(3) In case the issuer of the Exchange Securities shall, at any time, make any distribution of money, securities, or other property on Exchange Securities held by the Escrow Agent under the Escrow Agreement (other than (i) cash dividends to which the Company is entitled and interest paid on debt securities, as specified in paragraph (2) above, (ii) dividends, subdivisions, combinations and reclassifications for which an adjustment in the Exchange Rate is made pursuant to Section 1804 and (iii) securities or other property received in a transaction to which Section 1810 applies) or shall grant to the Company (with respect to any securities or property held by the Escrow Agent) or the Escrow Agent, as the holder thereof, any transferable subscription rights, options, warrants or other similar transferable rights, the Escrow

94

105

Agent shall, as soon as reasonably practicable after its receipt thereof, notify the Company of such receipt and the Company, in its sole discretion, may promptly cause the Escrow Agent to offer such rights, options, warrants, securities or other property to the Company at the Market Price therefor if there is an applicable market established for such securities, property, subscription rights, options, warrants or other such rights, or at such price as a major bracket investment banker selected by the Company and acceptable to the Trustee shall determine. If the Company does not cause the Escrow Agent to make such an offer within five Business Days of any such distribution or if the Company does not accept such an offer within five Business Days of receipt of such offer, the Escrow Agent shall, to the extent legally permissible, sell all such securities and other property received by way of distribution and all such rights for cash in such manner as the Company shall instruct in writing and shall apply the proceeds from the sale thereof as hereinafter provided. To the extent that the Company shall, within ten days of such notification, furnish the Escrow Agent with (x) an Opinion of Counsel to the effect that such distribution or grant or sale of the securities or other property received on such distribution or the rights received by such grant is taxable to the Company or the Escrow Agent and (y) an Officers' Certificate as to the amount of Federal, State and local tax payable by the Company and the Escrow Agent as a result of such distribution or grant and an amount estimated to be payable as a result of such sale (computed as provided in Section 1815), the Escrow Agent shall pay to, or to the order of, the Company, or itself, in the case of taxes payable by it, from the cash received in such distribution, if any, or cash apportioned to Exchange Securities hereunder or from the net cash proceeds received from such sale, the amount of such tax. In the case of taxes estimated to be payable as a result of such sale, the Company shall deliver an Officers' Certificate within 10 days after completion of such sale stating the actual taxes payable and appropriate adjustment of such payments shall thereupon be made. The remaining portion of such cash received, if any, and net cash proceeds shall be apportioned equally among the Exchange Securities for which outstanding Securities of the applicable series are exchangeable as of immediately after the close of business on the record date for the distribution or grant to which this paragraph (3) applies, or if there is no such record date, the effective date of such distribution or grant. Any Holder surrendering any Securities after such record date, or such effective date, as the case may be, and prior to the distribution date shall be entitled to receive, in addition to the Exchange Securities for which such Securities are

exchangeable (and any cash theretofore apportioned to such shares hereunder), the amount of cash so apportioned to such Exchange Securities. Whenever a transaction occurs to which this paragraph (3) applies, the Company shall determine the Exchange Rate and the cash apportioned to the Exchange Securities as adjusted in accordance with this paragraph (3) and shall prepare an Officers' Certificate setting forth the Exchange Rate and the cash apportioned to the Exchange Securities held by the Escrow Agent under the Escrow Agreement as so adjusted and showing in detail the facts upon which such calculation is based, and such certificate shall forthwith be filed with the Trustee and Escrow Agent and a notice stating that a transaction to which this paragraph (3) applies has occurred and setting forth the Exchange Rate and the cash apportioned to the Exchange Securities, as adjusted in accordance with this Section 1805, shall as soon as practicable be mailed by or on behalf of the Company to the Holders at their last addresses as they shall appear in the Security Register.

(4) If the issuer of Exchange Securities, at any time any Securities of a series which is exchangeable for such Exchange Securities are outstanding, shall distribute or grant to holders of any Exchange Securities held or required to be held by the Escrow Agent under the Escrow Agreement any nontransferable subscription rights, options, warrants or other similar nontransferable rights, securities or property, the Company shall elect to do any of the following: (i) to the extent permissible by the terms of said subscription rights, options, warrants or other similar non-transferable rights, securities or property, cause such rights, securities or property to be distributed pro rata by the Escrow Agent to the Holders of record of Securities shown in the Security Register as of immediately after the close of business on the record date (or if there is no record date, the close of business on the effective date) for such distribution or grant, but subject to the provisions of Sections 1807, 1813 and 1815, (ii) provide to the Escrow Agent the necessary funds and direct the Escrow Agent to exercise such options, warrants, or rights and to hold the securities or other property received upon such exercise for the benefit of Holders of Securities of such series or (iii) direct the Escrow Agent to retain such options, warrants, rights, securities or property for delivery to the Holders of Securities of such series upon the exchange of such Securities. Any options, warrants, rights, securities or property retained pursuant to clause (iii) above and the amount of any proceeds received by the Escrow Agent pursuant to clause (ii) above (less any proceeds as determined pursuant to the last three sentences of this paragraph (4)) delivered to or sold or segregated for the benefit of the Company and less the amount of any taxes payable by the Company or the Escrow Agent with respect to such distribution, grant or sale, as determined pursuant to Sections 1807, 1813 and 1815, shall be apportioned equally among the Exchange Securities for which outstanding Securities of such series are exchangeable as of immediately after the close of business on the record date for the distribution or grant to which this paragraph (4) applies or, if there is no such record date, the effective date of such distribution or grant. Any Holder exchanging any Securities after such record date, or such effective date, as the case may be, shall be entitled to receive the Exchange Securities for which such Securities are exchangeable and the amount of cash, or any such options, warrants, rights, securities or property, so apportioned to such Exchange Securities, but subject to the provisions of the last three sentences of this paragraph and Sections 1807, 1813 and 1815. Notwithstanding the foregoing, any such options, warrants or rights which may expire prior to the last date of the period during which

Securities of the applicable series are exchangeable for Exchange Securities may not be retained pursuant to clause (iii) of this paragraph (4) beyond the expiration date thereof, but must be distributed or exercised pursuant to clause (i) or (ii) of this paragraph (4). The Company shall be promptly repaid any amounts supplied by it pursuant to the foregoing clause (ii) of this paragraph (4). If the Company is entitled to any amount because it provided funds to pay for an exercise pursuant to clause (ii) of this paragraph (4), it shall receive such amount in cash held by the Escrow Agent, but if the amount of such cash held by the Escrow Agent shall be less than the amount due the Company, the Escrow Agent shall (x) as soon as reasonably practicable and to the extent legally permissible, sell in accordance with written instructions received from the Company such number of Exchange Securities or other property held or required to be held by the Escrow Agent, as may be necessary to realize an amount of proceeds which, after payment of any taxes by the Company and the Escrow Agent on such sale (which shall be evidenced by an Opinion of Counsel and Officers' Certificate in the manner specified in Sections 1807, 1813 and

96

107

1815), shall equal the amount of any such insufficiency, or (y) if in the opinion of the Company such sale is not advisable or legally permissible, segregate for the benefit of the Company or deliver to the Company an amount of property, held or required to be held by the Escrow Agent, having a market value, as determined by an Officers' Certificate, equal to the amount of such insufficiency plus the amount of taxes payable upon the delivery or sale thereof (which shall be evidenced as aforementioned). Following such sale, segregation or delivery, the Exchange Securities, cash and other property, held by the Escrow Agent shall be proportionately adjusted so as to be apportioned equally to the Securities of the applicable series outstanding as of immediately after the close of business on the record date for the distribution or grant to which this paragraph (4) applies or, if there is no record date, the effective date of such distribution or grant.

(5) The Escrow Agreement shall set forth whether the Company shall be entitled to any net income or gain resulting from investments of cash made by the Escrow Agent pursuant to the Escrow Agreement.

(6) The Company shall have the full and unqualified right and power to exercise any rights to vote, or to give consents to take any other action in respect of, the Exchange Securities or any other security held in escrow under the Escrow Agreement at any time, and the Escrow Agent shall have no duty to exercise any rights.

(7) The Company shall be entitled, out of the property held by the Escrow Agent, to such number of Exchange Securities and such amount of any cash (investments contemplated by this Section 1805 being deemed for these purposes to be cash and to be valued at their outstanding principal balance) and other property as shall be in excess of the number of Exchange Securities and the amount of cash and other property apportioned thereto, all held by the Escrow Agent, which would be deliverable upon the exchange of all Securities of the applicable series then outstanding, and such excess shall be held by the Escrow Agent for the account of the Company and, subject to the limitations contained in the Escrow Agreement, released to the Company upon demand. With respect to releases of cash, the Escrow Agent shall release cash or such of the investment securities so held as the Company may designate.

(8) Upon expiration of the right to surrender Securities of the applicable series for exchange and when all other obligations of the Company

shall have been satisfied under the Escrow Agreement, all cash and investments and other property held by the Escrow Agent under the Escrow Agreement which are not required with respect to Securities previously surrendered for exchange will, subject to the limitations contained in the Escrow Agreement, be delivered by the Escrow Agent to the Company.

108

SECTION 1806. NOTICE OF CERTAIN EVENTS.

In case at any time:

(1) the issuer of the Exchange Securities shall declare a dividend (or any other distribution) on the Exchange Securities; or

(2) the issuer of the Exchange Securities shall authorize the granting to holders of Exchange Securities of subscription rights, options, warrants or other similar rights; or

(3) there shall occur any reclassification of Exchange Securities (other than a subdivision or combination of outstanding shares of Exchange Securities) or any consolidation or merger to which the issuer of the Exchange Securities is a party and for which approval of any stockholders of such issuer is required, or the sale or transfer of all or substantially all of the assets of such issuer; or

(4) there shall occur the voluntary or involuntary dissolution, liquidation or winding up of the issues of the Exchange Securities;

then the Company shall cause to be filed at the office or agency maintained for the purpose of exchange of Securities pursuant to Section 1002, and shall cause to be mailed to the Holders of Securities at their last addresses as they shall appear in the Security Register, as promptly as practicable after receipt by the Company of notice of any record date or other applicable date hereinafter specified a notice stating (i) the date on which a record is to be taken for the purpose of such dividend, distribution, or grant of rights, or, if a record is not to be taken, the date as of which the holders of Exchange Securities of record to be entitled to such dividend, distribution or grant of rights is to be determined, or (ii) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Exchange Securities shall be entitled to exchange their Exchange Securities for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

SECTION 1807. TRANSFER TAXES.

The Company will pay any and all documentary, stamp, transfer or similar taxes that may be payable in respect of the transfer and delivery of Exchange Securities pursuant hereto; provided, however, that the Company shall not be required to pay any such tax which may be payable in respect of any transfer involved in the delivery of Exchange Securities in a name other than that in which the Securities so exchanged were registered and no such transfer or delivery shall be made unless and until the person requesting such transfer has paid to the Company the amount of any such tax, or has established, to the satisfaction of the Company, that such tax has been paid; and, provided, further, that the Company shall not be obligated to pay any withholding taxes



SECTION 1808. SHARES FREE AND CLEAR.

The Company hereby warrants that, upon exchange of a Security pursuant to this Indenture, the Holder thereof shall receive the Exchange Securities and any cash and other property apportioned thereto for which such Security is at such time exchangeable pursuant to this Indenture free and clear of any and all liens, claims, charges and encumbrances of the Company and of any Person claiming through the Company. Except as provided in Section 1807, the Company will pay all liens and charges with respect to the delivery of Exchange Securities and any cash apportioned thereto in exchange for Securities hereunder.

The Company will endeavor promptly to comply and to cause the Escrow Agent to comply with all Federal and state securities laws regulating the offer and delivery of Exchange Securities upon exchange of Securities, if any.

SECTION 1809. CANCELLATION OF EXCHANGED SECURITIES.

All Securities delivered for exchange shall be delivered by the Escrow Agent to the Trustee for cancellation and the Trustee shall dispose of the same as provided in Section 309.

SECTION 1810. PROVISIONS IN CASE OF CONSOLIDATION, MERGER OR SALE OF ASSETS OF THE ISSUER OF EXCHANGE SECURITIES.

In the case of any consolidation or merger of the issuer of Exchange Securities with or into any other corporation or of any sale or transfer of all or substantially all of the assets of the issuer of Exchange Securities or of any voluntary or involuntary dissolution, liquidation or winding up of the issuer of Exchange Securities, the Company shall execute and deliver to the Trustee a supplemental indenture satisfactory in form to the Trustee, and to the Escrow Agent a supplemental escrow agreement satisfactory in form to the Escrow Agent, providing that the holder of each Security of the applicable series then outstanding shall have the right thereafter to exchange such Security for (i) the kind and amount of securities and other property receivable upon such consolidation, merger, sale, transfer, dissolution, liquidation or winding up by a holder of the number of Exchange Securities for which such Security was exchangeable immediately prior to such consolidation, merger, sale, transfer, dissolution, liquidation or winding up had such holder of Exchange Securities failed to exercise any rights of election as to the kind or amount of securities or other property receivable upon such consolidation, merger, sale, transfer, dissolution, liquidation or winding up, and (ii) the kind and amount of securities (other than Exchange Securities) and other property apportioned to the Exchange Securities for which such Security was exchangeable immediately prior to such consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article Eighteen. The provisions of this Section 1810 shall similarly apply to any successive consolidation, merger, sale, transfer, dissolution, liquidation or winding up.



SECTION 1811. CERTAIN TENDER OR EXCHANGE OFFERS FOR EXCHANGE SECURITIES.

In the event that a tender offer or exchange offer for the Exchange Securities (including any security included within such term) is commenced by any Person (including the issuer of such security), the Securities of the applicable series may provide that the Company shall have the right to redeem, in accordance with this Section 1811, all or any part of such Securities so long as any notice of redemption shall be mailed not later than five days after the date of commencement of such tender or exchange offer as determined by the Company and such tender or exchange offer shall not have been terminated by the date that such notice is mailed at the Redemption Price then in effect. In the event notice of redemption is given in accordance with the preceding sentence, the Company shall thereafter have the right to instruct the Escrow Agent to tender the Exchange Securities pursuant to such tender or exchange offer, provided the number of Exchange Securities so tendered does not include the number of such Exchange Securities which would be deliverable upon exchange of the aggregate principal amount of the outstanding Securities of such series after giving effect to such redemption in accordance with this Section 1811. In addition to the information called for by Section 1104, any notice of redemption given pursuant to this Section 1811 shall state whether or not the Company by the date of such notice has decided to cause Exchange Securities held in escrow to be tendered pursuant to such tender or exchange offer and, if tendered, that such Exchange Securities may be sold, to the extent purchased, to the offeror in accordance with such tender or exchange offer except to the extent that the Holders of Securities called for redemption duly surrender their Securities to the Escrow Agent in exchange for Exchange Securities by not later than the close of business on the last Business Day preceding the fifteenth day (which date shall be specified) after the date such notice is mailed or to the extent that the Company otherwise determines to withdraw the shares so tendered. The Company shall cause to be withdrawn from the tender or exchange offer, or otherwise to be delivered to the Escrow Agent, a number of Exchange Securities at least equal to the number of Exchange Securities deliverable in exchange for Securities which are called for redemption pursuant to this Section 1811 and are duly surrendered for exchange for Exchange Securities by not later than the close of business on such last Business Day preceding the fifteenth day in order to permit such Securities so to be exchanged. The proceeds of the sale of Exchange Securities sold pursuant to the tender or exchange offer and any shares tendered which are returned to the Company or the Escrow Agent following the expiration or termination of such tender or exchange offer, or which are withdrawn, which are not deliverable in exchange for Securities duly surrendered for Exchange Securities by the close of business on such fifteenth day shall be the property of the Company and not subject to the Escrow Agreement.

SECTION 1812. OBLIGATIONS OF TRUSTEE AND ESCROW AGENT; COMPANY DETERMINATION FINAL.

Subject to the provisions of Section 601, neither the Trustee nor the Escrow Agent shall at any time be under any duty or responsibility to any Holder of Securities to determine whether any facts exist which may require any adjustment of the Exchange Rate, or with respect to the nature or extent of any

such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee nor the Escrow Agent shall be accountable with respect to the validity or value (or the kind or amount) of any Exchange Securities, or of any securities or property, which may at any time be issued or delivered upon the exchange of any Security; and neither the Trustee nor the Escrow Agent makes any representation with respect thereto. Neither the Trustee nor the Escrow Agent shall be responsible for any failure of the Company to transfer or deliver any Exchange Securities or stock certificates or other securities or property to the Escrow Agent as provided herein or, subject to the provisions of Section 601 and the express obligations assumed by the Escrow Agent under the Escrow Agreement, to comply with any of the covenants of the Company contained in this Article Eighteen. Any determination that the Company or the Board of Directors must make pursuant to this Article Eighteen is conclusive, absent manifest error.

#### SECTION 1813. TAX ADJUSTMENTS OF EXCHANGE RATE.

If an event shall occur which causes the Exchange Rate to be subject to adjustment pursuant to Section 1804 hereof, or a merger, consolidation, sale or transfer of assets shall occur requiring a supplemental indenture under Section 1810 hereof, and if, within 10 days after the effective date of such transaction, the Company shall furnish the Escrow Agent with an Opinion of Counsel to the effect that such transaction is taxable to the Company or the Escrow Agent and an Officers' Certificate as to the amount of Federal, state and local tax payable by the Company and the Escrow Agent as a result of such transaction (computed as provided in Section 1815), the Escrow Agent shall pay to, or to the order of, the Company, in the case of taxes payable by the Company, or itself, in the case of taxes payable by it, the cash held by it and apportioned or to be apportioned to the Exchange Securities for which outstanding Securities are exchangeable, up to the amount of such taxes. In the event that the cash held by the Escrow Agent and so apportioned or to be apportioned is insufficient to pay to the Company or the Escrow Agent the amount of such taxes, the Escrow Agent shall, as soon as reasonably practicable and to the extent legally permissible, sell in accordance with written instructions received from the Company such number of Exchange Securities (including any securities included within the meaning of that term as shall be specified in such written instructions) as may be necessary to pay, from the proceeds thereof after payment of any taxes by the Company and the Escrow Agent on such sale (which shall be similarly evidenced by an Opinion of Counsel and Officers' Certificate), the amount of any such insufficiency. The Escrow Agent shall notify the Company and the Trustee of any such sale and the number of shares sold. Following payment of all necessary amounts to the Company and to the Escrow Agent, the Exchange Rate and the cash apportioned to the Exchange Securities held by the Escrow Agent shall be proportionally adjusted so that the Exchange Securities and the cash apportioned thereto shall be apportioned equally to the Securities of the applicable series outstanding as of immediately after the close of business on the record date or the effective date for the transaction to which this Section 1813 applies (as shall be specified in Section 1804 or 1810, whichever is applicable). Any Holder surrendering any Securities for exchange after such record date, or such effective date, as the case may be, shall be entitled to receive Exchange Securities and cash apportioned thereto as so adjusted pursuant to this Section. If this Section 1813 shall apply to a transaction and the sale by the

Escrow Agent of the consideration receivable therein shall not be legally permissible and the amount of cash apportioned to the Exchange Securities shall not be sufficient to pay all taxes payable by the Company and the Escrow Agent which arise from such transaction (computed as provided in Section 1815), the Company may direct the Escrow Agent to segregate for the benefit of the Company or the Escrow Agent (as the case may be) or deliver to the Company or to the Escrow Agent (as the case may be) an amount of Exchange Securities (including any securities included therein) theretofore held by the Escrow Agent for exchange having a Market Price, as determined by an Officers' Certificate, equal to the unsatisfied portion of the tax payable by the Company or the Escrow Agent (as the case may be) with respect to such transaction including any tax payable upon the delivery or sale thereof in order to satisfy the aforementioned tax, and such Exchange Securities shall thereafter be solely for the account of the Company or the Escrow Agent (as the case may be) and Holders of Securities shall have no rights thereto.

In the event that an Opinion of Counsel given pursuant to this Indenture concludes that whether the transaction is taxable to the Company or the Escrow Agent is uncertain under the then state of the law or facts or both, the Company shall have the option of requiring the Escrow Agent to segregate the amount of funds that would be payable (or other property in lieu thereof), pursuant to an Officers' Certificate, if such taxes were deemed payable, together with the amount estimated in good faith to be the reasonable costs and expenses (including attorneys' fees) of obtaining a determination as set forth below. The Holders of Securities shall have no rights to such funds or other property, which shall be held by the Escrow Agent for the Company (or for the Escrow Agent, as the case may be) and the Exchange Securities and cash apportioned thereto deliverable upon exchange of Securities pursuant to this Article Eighteen shall be reapportioned as though such segregated amounts had been paid to the Company or the Escrow Agent for such taxes, and any Holder surrendering any Securities for exchange after the record or effective date of the applicable transaction giving rise to an adjustment pursuant to this Section 1813 shall be entitled to receive only such Exchange Securities and cash. The Company shall thereupon in good faith seek an appropriate determination from the appropriate agencies and, if judged necessary by the Company in good faith, from courts, as to whether the transaction is taxable. If an appropriate determination is made that such transaction is so taxable then the Escrow Agent shall immediately pay the funds or deliver the property so segregated to the Company (or, if taxes are payable by the Escrow Agent, shall retain such funds or property for itself), and if an appropriate determination is made that such transaction is not taxable or an amount of tax is payable which is less than the amount of funds or property so segregated, then the Escrow Agent, after paying the Company (or itself, as the case may be) out of funds or property the reasonable expenses and costs (including attorneys' fees) of obtaining such determination (and any taxes so payable), shall apportion such remaining funds or other property which had been so segregated among the Exchange Securities and cash apportioned thereto as of immediately after the close of business on the record date or the effective date of such transaction giving rise to an adjustment pursuant to Section 1804 or 1810 hereof, whichever is applicable. If any Security has been exchanged on or after such record date or such effective date, as the case may be, and before a determination is made that no taxes are payable or an amount of tax is payable which is less than the amount of funds or property so segregated, the

Escrow Agent, to the extent not previously delivered, shall deliver such Exchange Securities and cash and other property apportioned thereto as reapportioned following such determination, to the person to which and in the manner in which the other proceeds of the exchange of such Securities were delivered.

SECTION 1814. CASH EQUIVALENT.

Notwithstanding any other provision in this Article Eighteen, in lieu of delivering certificates representing Exchange Securities in exchange for Securities surrendered in accordance with Section 1802, the Escrow Agent shall, if so directed by the Company, pay to the Holder surrendering such Securities an amount in cash equal to the value of Exchange Securities for which such Securities are exchangeable (based on the Market Price on the date of receipt by the Escrow Agent of the notice of exchange delivered by such Holder pursuant to Section 1802), plus any cash and other property theretofore apportioned to such Exchange Securities in accordance with Section 1805. Prior to so directing the Escrow Agent to make any such cash payment, the Company shall deposit with the Escrow Agent the cash so payable.

SECTION 1815. COMPUTATION OF TAXES PAYABLE.

If there shall be any distribution or grant of money, securities, other property rights, options or warrants on or with respect to Exchange Securities held by the Escrow Agent under the Escrow Agreement, or the sale thereof by the Escrow Agent, as provided in Section 1805(3), or any transaction referred to in Section 1813, and such distribution, grant, sale or transaction is or may be taxable to the Company or the Escrow Agent (or would be taxable if the Company or the Escrow Agent, as the case may be, then had any income tax liability), the amount of taxes payable, or estimated to be payable, as a result of such distribution, grant, sale or transaction shall be deemed, for purposes of Section 1805(3) and 1813, to be the higher of (1) the actual amount payable, or estimated to be payable, as a result thereof and (2) the amount which would be payable, or estimated to be payable, as a result thereof if the income from such distribution, grant, sale or transaction, net of expenses thereof, were the sole income of the Company or the Escrow Agent, as the case may be, and the Company or the Escrow Agent, as the case may be, had no deductions, expenses, loss carryforwards, or credits, and was not entitled to any refunds, for the period.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

DIGITAL EQUIPMENT CORPORATION

Attest:

By: \_\_\_\_\_

Name:  
Title:

\_\_\_\_\_

BANKERS TRUST COMPANY, Trustee

Attest:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

104

115

EXHIBIT A

Form of Security

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FORM OF FACE OF SECURITY

[If the Security is an Original Issue Discount Security, insert -- FOR PURPOSES OF SECTION 1273 and 1275 OF THE UNITED STATES INTERNAL REVENUE CODE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THIS SECURITY IS \_\_\_% OF ITS PRINCIPAL AMOUNT, THE ISSUE DATE IS \_\_\_\_\_, 19\_\_ [AND] THE YIELD TO MATURITY IS \_\_\_% [, THE METHOD USED TO DETERMINE THE AMOUNT OF ORIGINAL ISSUE DISCOUNT APPLICABLE TO THE SHORT ACCRUAL PERIOD OF \_\_\_\_\_, 19\_\_ TO \_\_\_\_\_, 19\_\_, IS \_\_\_% OF THE PRINCIPAL AMOUNT OF THIS SECURITY.]

DIGITAL EQUIPMENT CORPORATION

No. \_\_\_\_\_ \$ \_\_\_\_\_

DIGITAL EQUIPMENT CORPORATION, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts (herein called the "Company", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \_\_\_\_\_ Dollars on \_\_\_\_\_.

[IF THE SECURITY IS TO BEAR INTEREST PRIOR TO MATURITY, INSERT -- and to pay interest thereon from \_\_\_\_\_, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on \_\_\_\_\_ and \_\_\_\_\_ in each year, commencing \_\_\_\_\_, at the rate of \_\_\_% per annum, until the principal hereof is paid or made available for payment and (to the extent that the payment of such interest shall be legally enforceable) at the rate of \_\_\_% per annum on any overdue principal and premium and on any overdue installment of interest. The

interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the \_\_\_\_\_ or \_\_\_\_\_ (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of

A-1

116

Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.]

[IF THE SECURITY IS NOT TO BEAR INTEREST PRIOR TO MATURITY, INSERT -- The principal of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal of this Security shall bear interest at the rate of \_\_\_% per annum (to the extent that the payment of such interest shall be legally enforceable), which shall accrue from the date of such default in payment to the date payment of such principal has been made or duly provided for. Interest on any overdue principal shall be payable on demand. Any such interest on any overdue principal that is not so paid on demand shall bear interest at the rate of \_\_\_% per annum (to the extent that the payment of such interest shall be legally enforceable), which shall accrue from the date of such demand for payment to the date payment of such interest has been made or duly provided for, and such interest shall also be payable on demand.]

Payment of the principal of (and premium, if any, on) [IF APPLICABLE, INSERT -- and interest on] this Security will be made at the office or agency of the Company maintained for that purpose in \_\_\_\_\_, 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 [if applicable, insert -- ; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register].

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

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporation seal.

DATED:

DIGITAL EQUIPMENT CORPORATION

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

A-2

117

FORM OF REVERSE OF SECURITY

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of January 21, 1994 (herein called the "Indenture"), between the Company and Bankers Trust Company, as Trustee (herein called the "Trustee", which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof [IF APPLICABLE, INSERT -- limited in aggregate principal amount to \$\_\_\_\_\_].

[If applicable, insert -- The Securities of this series are subject to redemption upon not less than 30 days' notice by mail, [IF APPLICABLE, INSERT -- (1) on \_\_\_\_\_ in any year commencing with the year \_\_\_\_\_ and ending with the year \_\_\_\_\_ through operation of the sinking fund for this series at a Redemption Price equal to 100% of the principal amount, and (2)] at any time [IF APPLICABLE, INSERT -- on or after \_\_\_\_\_, 19\_\_], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [if applicable, insert -- on or before \_\_\_\_\_, \_\_%, and if redeemed] during the 12-month period beginning \_\_\_\_\_ of the years indicated,

<TABLE>

<CAPTION>

Year	Redemption Price	Year	Redemption Price
----	-----	----	-----
<S>	<C>	<C>	<C>

</TABLE>



and thereafter at a Redemption Price equal to \_\_\_% of the principal amount, together in the case of any such redemption [IF APPLICABLE, INSERT -- (whether through operation of the sinking fund or otherwise)] with accrued interest to the Redemption Date, but interest installments the Stated Maturity of which is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

A-3

118

[IF APPLICABLE, INSERT -- The Securities of this series are subject to redemption upon not less than 30 days' notice by mail, (1) on \_\_\_\_\_ in any year commencing with the year \_\_\_\_\_ and ending with the year \_\_\_\_\_ through operation of the sinking fund for this series at the Redemption Prices for redemption through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below, and (2) at any time [IF APPLICABLE, INSERT -- on or after \_\_\_\_\_], as a whole or in part, at the election of the Company, at the Redemption Prices for redemption otherwise than through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below: If redeemed during the 12-month period beginning \_\_ \_\_\_\_\_ of the years indicated,

<TABLE>

<CAPTION>

Year -----	Redemption Price for Redemption Through Operation of the Sinking Fund -----	Price For Redemption Otherwise Than Through Operation of the Sinking Fund -----
<S>	<C>	<C>

</TABLE>

and thereafter at a Redemption Price equal to \_\_\_% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[IF APPLICABLE, INSERT -- The sinking fund for this series provides for the redemption on \_\_\_\_\_ in each year beginning with the year \_\_\_\_\_ and ending with the year \_\_\_\_\_ of [not less than] \$ \_\_\_\_\_ [("mandatory sinking fund") and not more than \$ \_\_\_\_\_] aggregate principal amount of Securities of this series. [Securities of this series acquired or redeemed by the Company

otherwise than through [mandatory] sinking fund payments may be credited against subsequent [mandatory] sinking fund payments otherwise required to be made -- in the inverse order in which they become due.]]

In the event of redemption of this Security in part only, a new Security or Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

A-4

119

[IF APPLICABLE, INSERT -- Any Securities called for redemption, unless surrendered for conversion before the close of business on the Business Day prior to the Redemption Date, may be deemed to be purchased from the Holders of such Securities at an amount not less than the Redemption Price, together with accrued interest, if any, to the Redemption Date, by one or more investment bankers or other purchasers who may agree with the Company to purchase such Securities from the Holders, to convert them into Common Stock of the Company and to make payment for such Securities to the Trustee in trust for such Holders.]

The Securities are subordinated to all existing and future Senior Indebtedness. To the extent provided in the Indenture, Senior Indebtedness must be paid before the Securities may be paid. The Indenture does not limit the present or future amount of Senior Indebtedness the Company may have. The Company agrees, and each Security holder by accepting a Security agrees, to such subordination and authorizes the Trustee to give it effect and appoints the Trustee as attorney-in-fact for such purpose.

[IF APPLICABLE, INSERT -- Subject to and upon compliance with the provisions of the Indenture, the Holder of this Security is entitled, at his option, at any time on or before the close of business on \_\_\_\_\_, or in case this Security or a portion hereof is called for redemption, then in respect of this Security or such portion hereof until and including, but (unless the Company defaults in making the payment due upon redemption) not after, the close of business on the Business Day immediately preceding the Redemption Date, to convert this Security (or any portion of the principal amount hereof which is \$1,000 or an integral multiple thereof), at the principal amount hereof, or of such portion, into fully paid and nonassessable shares (calculated as to each conversion to the nearest 1/100 of a share) of Common Stock of the Company at a conversion price equal to \$\_\_\_\_\_ aggregate principal amount of Securities for each share of Common Stock (or at the current adjusted Conversion Price if an adjustment has been made as provided in the Indenture) by surrender of this Security in the manner set forth in the Indenture. The Company's delivery to the Holder of the fixed number of shares of Common Stock of the Company (and any cash in lieu of a fractional share of such Common Stock) into which the Security is convertible shall be deemed to satisfy the Company's obligation to pay the principal amount of the Security and all accrued interest and original issue discount that has not previously been paid. The Common Stock of the Company so delivered shall be treated as issued first in payment of accrued interest and original issue discount and then in payment of principal. Thus, accrued interest and original issue discount shall be treated as paid rather than cancelled, extinguished or

forfeited. The Conversion Price is subject to adjustment as provided in the Indenture. In addition, the Indenture provides that in case of certain consolidations or mergers to which the Company is a party or the transfer or lease of its properties and assets substantially as an entirety, the Indenture shall be amended, without the consent of any Holders of Securities, as set forth in, and in accordance with, the provisions of the Indenture. All of the terms and conditions relating to any conversion of this Security shall be as set forth in the Indenture.]

[IF APPLICABLE, INSERT -- Subject to the provisions of the Indenture, at the option of the holder hereof, this Security (or any portion hereof which is a multiple of \$1,000) may be exchanged for \_\_\_\_\_ shares of \_\_\_\_\_ of \_\_\_\_\_ (the "Exchange Securities")

A-5

120

(calculated to the nearest \_\_\_\_ of a share) for each \$1,000 principal amount hereof (and cash and other property in certain events), subject to such adjustments, if any, to the Exchange Rate and the securities or other property deliverable upon exchange hereof as may be required by the Indenture, upon delivery of this Security to the Company at the office or agency maintained by the Company for such purpose, accompanied by instruments of transfer, in form satisfactory to the Company, duly executed by the Holder, and by written notice that the Holder elects so to exchange this Security (or any portion hereof which is a multiple of \$1,000). The right of exchange shall terminate on the close of business on \_\_\_\_\_, or, if this Security shall be called for redemption on the close of business on the Business Day next preceding the Redemption Date (unless in the case of any such redemption the Company shall default in the payment due upon the redemption hereof). Except as provided in this paragraph or as otherwise expressly provided in the Indenture, no payment or adjustment shall be made on account of interest accrued on any Security (or portion thereof) so exchanged or on account of any dividends on the Exchange Securities delivered upon such exchange. No fractional Exchange Securities shall be delivered upon exchange hereof, but the Company shall pay a cash adjustment in lieu thereof.]

The Indenture contains provisions for defeasance at any time of (a) the entire indebtedness of this Security and (b) certain other obligations, in each case upon compliance by the Company with certain conditions set forth therein, which provisions apply to this Security.

[IF THE SECURITY IS NOT AN ORIGINAL ISSUE DISCOUNT SECURITY, INSERT --If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

[IF THE SECURITY IS AN ORIGINAL ISSUE DISCOUNT SECURITY, INSERT --If an Event of Default with respect to Securities of this series shall occur and be continuing, an amount of principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount shall be equal to [-- INSERT FORMULA FOR DETERMINING THE AMOUNT]. Upon payment (i) of the amount of principal so declared due and

payable and (ii) of interest on any overdue principal and overdue interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and interest, if any, on the Securities of this series shall terminate.]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the

A-6

121

Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium, if any) and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of (and premium, if any) and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of \$\_\_\_\_\_ and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any

tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

No recourse shall be had for the payment of the principal of or premium, if any, or the interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any past, present or future shareholder, employee, officer or director, as such, of the Company or of any successor, either directly or through the Company or any successor, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

A-7

122

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

A-8

123

#### FORM OF CONVERSION NOTICE

The undersigned owner of this Security hereby irrevocably exercises the option to convert this Security, or the portion hereof (which is \$1,000 or an integral multiple thereof) below designated, into shares of Common Stock of Digital Equipment Corporation in accordance with the terms of the Indenture referred to in this Security, and directs that the shares issuable and deliverable upon conversion, together with any check in payment for any fractional shares and any Securities representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. Any amount required to be paid by the undersigned on account of interest accompanies this Security.

Dated:

Principal Amount of this Security

to be Converted  
\$ \_\_\_\_\_

\_\_\_\_\_  
(Signature)

If shares of Common Stock are to be issued and registered otherwise than to the registered Holder named above, please print or typewrite name and address, including zip code, and social security or other taxpayer identification number.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A-9

124

FORM OF NOTICE OF ELECTION TO EXCHANGE

The undersigned owner of this Security hereby irrevocably exercises the option to exchange this Security, or portion hereof below designated, for Exchange Securities or securities or other property or cash in accordance with the terms of the Indenture referred to in this Security and directs that the Exchange Securities, other securities, other property or cash deliverable upon the exchange, together, with any check in payment for fractional Exchange Securities and any Securities representing any unexchanged principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If the Exchange Securities or other securities are to be delivered registered in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Dated:

\_\_\_\_\_  
(Signature)

Principal Amount of this Security  
to be Exchanged  
\$ \_\_\_\_\_

Fill in for registration of Exchange Securities or other securities if to be delivered, and of Securities if to be issued, otherwise then to the registered Holder.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Social Security or Other Taxpayer  
Identifying Number)

(Address)

---

(Please print name and  
address, including zip code  
number)

A-10



\_\_\_\_\_  
Examiner

The Commonwealth of Massachusetts

Office of the Massachusetts Secretary of State  
Michael J. Connolly, Secretary  
One Ashburton Place, Boston, Massachusetts 02108

ARTICLES OF AMENDMENT  
General Laws, Chapter 156B, Section 72

FEDERAL IDENTIFICATION  
No. 04-2226590f

We, Robert B. Palmer, President and Gail S. Mann, Esq., Clerk of

Digital Equipment Corporation  
(EXACT Name of Corporation)

located at: 146 Main Street, Maynard, MA 01754  
(MASSACHUSETTS Address of Corporation)

do hereby certify that these ARTICLES OF AMENDMENT affecting  
Articles NUMBERED:

3 and 4

(Number those articles 1,2,3,4,5 and/or 6 being amended hereby)

\_\_\_\_\_  
Name  
Approved

of the Restated Articles of Organization were duly adopted at a  
meeting held on November 4, 1993, by vote of:

93,509,891 shares of Common Stock out of 135,009,330 shares outstanding,  
type, class & series, (if any)

shares of Common Stock out of shares outstanding,  
type, class & series, (if any)

shares of Common Stock out of shares outstanding,  
type, class & series, (if any)

being at least two-thirds of each type, class or series outstanding and  
entitled to vote thereon and of each type, class or series of stock whose  
rights are adversely affected thereby:

- 1 For amendments adopted pursuant to Chapter 156B, Section 70.
- 2 For amendments adopted pursuant to Chapter 156B, Section 71.

Note: If the space provided under any Amendment or item on this form is insufficient, additions shall be set forth on separate 8 1/2 x 11 sheets of paper leaving a left-hand margin of at least 1 inch for binding. Additions to more than one Amendment may be continued on a single sheet so long as each Amendment requiring each such addition is clearly indicated.

2

To CHANGE the number of shares and the par value (if any) of any type, class or series of stock which the corporation is authorized to issue, fill in the following:

The total presently authorized is:

WITHOUT PAR VALUE STOCKS		WITH PAR VALUE STOCKS		
TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
COMMON:	None	COMMON:	450,000,000	\$1.00
PREFERRED:	None	PREFERRED:	None	

CHANGE the total authorized to:

WITHOUT PAR VALUE STOCKS		WITH PAR VALUE STOCKS		
TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
COMMON:	None	COMMON:	450,000,000	\$1.00
PREFERRED:	None	PREFERRED:	25,000,000	\$1.00

3

ARTICLE 4 is hereby amended and restated in its entirety as set forth

in Exhibit A attached hereto.

The foregoing amendment will become effective when these articles of amendment are filed in accordance with Chapter 156B, Section 6 of The General Laws unless these articles specify, in accordance with the vote adopting the amendment, a later effective date not more than thirty days after such filing, in which event the amendment will become effective on such later date.

EFFECTIVE DATE: upon filing

IN WITNESS WHEREOF AND UNDER THE PENALTIES OF PERJURY, we have hereunto signed our names this 4th day of November, in the year 1993.

/s/ Robert B. Palmer

President

\_\_\_\_\_  
Robert B. Palmer

/s/ Gail S. Mann

Clerk

\_\_\_\_\_  
Gail S. Mann, Esq.

The following is a statement of the designations, preferences, voting powers, qualifications, and special or relative rights or privileges in respect of each class of authorized capital stock of the Corporation.

## A. COMMON STOCK

1. General. There shall be one class of common stock of the Corporation (the "Common Stock"). The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of outstanding shares of Preferred Stock of any class or series as may be designated herein or by the Board of Directors of the Corporation in accordance with the provisions hereof.

2. Voting. The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential and participation rights of any then outstanding Preferred Stock.

## B. PREFERRED STOCK

The preferred stock (the "Preferred Stock") may be issued in one or more series at such time or times and for such consideration or considerations as the Board of Directors of the Corporation may determine. Each series of the Preferred Stock shall be designated so as to distinguish the shares thereof from the shares of all other series and classes of the stock of the Corporation. Except as to the relative preferences, powers, qualifications, rights and privileges referred to below in this Part B, in respect of any or all of which there may be variations between different series, all shares of the Preferred Stock shall be identical. Different series of the Preferred Stock shall not be construed to constitute different classes of shares for the purpose of voting by classes.

Subject to limitations prescribed by law or by these Restated Articles of Organization, as amended, the Board of Directors is expressly authorized to provide by adopting a vote or votes, a certificate of which shall be filed in accordance with the Business Corporation Law of The Commonwealth of Massachusetts, for the issuance of the Preferred Stock in one or more series, each such series to have such number of shares, designations, preferences, voting powers, qualifications, and special or relative rights or privileges as shall be stated in the vote or votes establishing such series. The authority of the Board of Directors with respect to each such series shall include

(without limitation of the foregoing) the right to determine and fix:

(1) the distinguishing designation of such series and the number

6

of shares to constitute such series;

(2) the rate at which dividends, if any, on the shares of such series shall be declared and paid, or set aside for payment, whether dividends, at the rate so determined shall be cumulative, noncumulative or partially cumulative and whether the shares of such series shall be entitled to any participating or other dividends in addition to dividends at the rate so determined, and if so on what terms;

(3) the right, if any, of the Corporation to redeem shares of such series and, if redeemable, the price, terms and manner of such redemption;

(4) the special and relative rights and preferences, if any, and the amount or amounts per share, which the shares of such series shall be entitled to receive upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

(5) the terms and conditions, if any, upon which shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

(6) the obligation, if any, of the Corporation to retire or purchase shares of such series pursuant to a sinking fund or fund of a similar nature or otherwise, and the terms and conditions of such obligation;

(7) the voting rights, if any, of shares of such series; provided, however, that the holders of shares of Preferred Stock will not be entitled to

more than one vote per share when voting as a class with the holders of shares of Common Stock;

(8) the limitations, if any, on the issuance of additional shares of such series or any shares of any other series of the Preferred Stock; and

(9) such other preferences, powers, qualifications, and special or relative rights and privileges as shall be stated in the vote or votes providing for the establishment of such series of Preferred Stock.

7

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THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF AMENDMENT

GENERAL LAWS, CHAPTER 156B, SECTION 72

=====

I hereby approve the within articles of amendment and, the filing fee in the amount of \$                    having been paid, said articles are deemed to have been filed with me this                    day of 19   .

MICHAEL J. CONNOLLY  
Secretary of State

TO BE FILLED IN BY CORPORATION  
PHOTOCOPY OF ARTICLES OF AMENDMENT  
TO BE SENT TO:

Gail S. Mann, Esq.

\_\_\_\_\_

Digital Equipment Corporation  
111 Powdermill Road  
Maynard, MA 01754-1499  
Telephone: (508) 493-2206



DIGITAL EQUIPMENT CORPORATION  
CITIBANK, N.A., as Depository

and

THE HOLDERS FROM TIME TO TIME OF  
THE DEPOSITARY RECEIPTS DESCRIBED HEREIN.

Deposit Agreement  
relating to  
Series \_\_\_\_\_ Preferred Stock of  
Digital Equipment Corporation

Dated as of \_\_\_\_\_, 1994

<TABLE>

TABLE OF CONTENTS

<CAPTION>

	Page
	----
<S>	<C>
PARTIES . . . . .	1
RECITALS . . . . .	1

ARTICLE I  
Definitions

"Business Day" . . . . .	1
"Certificate of Designation" . . . . .	1
"Depository Shares" . . . . .	1
"Depository's Agent" . . . . .	1
"Depository's Office" . . . . .	2
"Receipt" . . . . .	2
"Record Holder" . . . . .	2
"Registrar" . . . . .	2

ARTICLE II  
Form of Receipts, Deposit of Preferred Stock, Execution and  
-----  
Delivery, Transfer, Surrender and Redemption of Receipts  
-----

SECTION 2.01. Form and Transfer of Receipts . . . . .	2
SECTION 2.02. Deposit of Preferred Stock; Execution and Delivery of Receipts in Respect Thereof . . . . .	3
SECTION 2.03. Redemption of Preferred Stock . . . . .	4
SECTION 2.04. Registration of Transfer of Receipts . . . . .	5
SECTION 2.05. Split-ups and Combinations of Receipts; Surrender of Receipts and Withdrawal of Preferred Stock . . . . .	5
SECTION 2.06. Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts . . . . .	6

SECTION 2.07.	Lost Receipts, etc. . . . .	7
SECTION 2.08.	Cancellation and Destruction of Surrendered Receipts . . . . .	7
SECTION 2.09.	Prohibition Against Preferred Stock, Depositary Shares or Receipt Lending . . . . .	7

ARTICLE III  
 Certain Obligations of Holders of Receipts and the Company  
 -----

SECTION 3.01.	Filing Proofs, Certificates, and Other Information . . . . .	7
SECTION 3.02.	Payment of Taxes or Other Governmental Charges . . . . .	8

</TABLE>

(i)

3

<TABLE>  
 <CAPTION>

		Page
		----
<S>	<C>	<C>
SECTION 3.03.	Representation and Warranty as to Preferred Stock . . . . .	8
SECTION 3.04.	Covenant as to Receipts . . . . .	8

ARTICLE IV  
 The Deposited Securities; Notices  
 -----

SECTION 4.01.	Cash Distributions . . . . .	8
SECTION 4.02.	Distributions Other than Cash, Rights, Preferences or Privileges . . . . .	9
SECTION 4.03.	Subscription Rights, Preferences or Privileges . . . . .	9
SECTION 4.04.	Notice of Dividends, etc.; Fixing of Record Date for Holders of Receipts . . . . .	10
SECTION 4.05.	Voting Rights . . . . .	11
SECTION 4.06.	Changes Affecting Deposited Preferred Stock and Reclassifications, Recapitalizations, etc. . . . .	11
SECTION 4.07.	Inspection of Reports . . . . .	12
SECTION 4.08.	Lists of Receipt Holders . . . . .	12
SECTION 4.09.	Tax and Regulatory Compliance . . . . .	12
SECTION 4.10.	Withholding . . . . .	12

ARTICLE V  
 The Depositary, the Depositary's Agents, the Registrar and the Company  
 -----

SECTION 5.01.	Maintenance of Offices, Agencies and Transfer Books by the Depositary; Registrar . . . . .	13
SECTION 5.02.	Prevention of or Delay in Performance by the Depositary, the Depositary's Agents, the Registrar or the Company . . . . .	13
SECTION 5.03.	Obligations of the Depositary, the Depositary's Agents, the Registrar and the Company . . . . .	14
SECTION 5.04.	Resignation and Removal of the Depositary; Appointment of Successor Depositary . . . . .	15
SECTION 5.06.	Indemnification . . . . .	16
SECTION 5.07.	Charges and Expenses . . . . .	17

ARTICLE VI  
 Amendment and Termination  
 -----

SECTION 6.01.	Amendment . . . . .	17
SECTION 6.02.	Termination . . . . .	17

</TABLE>

(ii)

4

<TABLE>  
 <CAPTION>

		Page
		----
<S>	<C>	<C>

ARTICLE VII  
 Miscellaneous  
 -----

SECTION 7.01.	Counterparts . . . . .	18
SECTION 7.02.	Holdings of Receipts are Parties; Exclusive Benefit of Parties . . . . .	18
SECTION 7.03.	Invalidity of Provisions . . . . .	18

SECTION 7.04.	Notices . . . . .	19
SECTION 7.05.	Depository's Agents . . . . .	19
SECTION 7.06.	Governing Law . . . . .	19
SECTION 7.07.	Inspection of Agreement . . . . .	20
SECTION 7.08.	Headings . . . . .	20
SECTION 7.09.	Board of Directors . . . . .	20

TESTIMONIUM . . . . .	
SIGNATURES . . . . .	
EXHIBIT A: Form of Depository Receipt . . . . .	

</TABLE>

(iii)

5

DEPOSIT AGREEMENT dated as of \_\_\_\_\_, 1994 among DIGITAL EQUIPMENT CORPORATION, a Massachusetts corporation (the "Company"), CITIBANK, N.A., a national banking association, as depository (the "Depository") and the holders from time to time of the Receipts described herein.

WHEREAS, it is desired to provide, as hereinafter set forth in this Agreement, for the deposit of Series \_\_\_\_\_ Preferred Stock, \$1.00 par value, [\$\_\_\_ liquidation preference] (the "Preferred Stock"), of the Company with the Depository for the purposes set forth in this Agreement and for the issuance hereunder of Receipts (as defined in Article I) evidencing Depository Shares (as defined in Article I) representing an interest in the Preferred Stock so deposited; and

WHEREAS, the Receipts are to be substantially in the form of Exhibit A hereto, with appropriate insertions, modifications and omissions, as hereinafter provided in this Agreement;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I  
Definitions  
-----

The following definitions shall for all purposes, unless otherwise indicated or the context otherwise requires, apply to the respective terms used in this Agreement:

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in the State of New York or the Commonwealth of Massachusetts are authorized or obligated by law or executive order to close.

"Certificate of Designation" means the Company's Certificate of Vote of Directors Establishing a Series of a Class of Stock, setting forth the voting powers, designation, preferences and other rights of the Preferred Stock dated \_\_\_\_\_, as filed with the Secretary of State of the Commonwealth of Massachusetts pursuant to M.G.L. Chapter 156B, Section 26.

"Depository Shares" shall mean Depository Shares of the Company, each representing [specify fraction] of a share of Preferred Stock and evidenced by a Receipt.

"Depository's Agent" shall mean an agent appointed by the Depository pursuant to Section 7.05.

6

"Depository's Office" shall mean the office of the Depository in the Borough of Manhattan, New York, New York, at which at any particular time its depository receipt business shall be administered.

"Receipt" shall mean one of the depository receipts issued hereunder, whether in definitive or temporary form.

"Record Holder" as applied to a Receipt shall mean the person in whose name a Receipt is registered on the books of the Depository maintained for such

purpose.

"Registrar" shall mean any bank or trust company that shall be appointed to register ownership and transfers of Receipts as herein provided.

ARTICLE II

Form of Receipts, Deposit of Preferred Stock, Execution and

Delivery, Transfer, Surrender and Redemption of Receipts

SECTION 2.01. FORM AND TRANSFER OF RECEIPTS. Definitive Receipts shall be engraved or printed or lithographed on steel- engraved borders and shall be substantially in the form set forth in Exhibit A hereto, with appropriate insertions, modifications and omissions, as hereinafter provided. Pending the preparation of definitive Receipts, the Depositary, upon the written order of the Company or any holder of Preferred Stock, as the case may be, delivered for deposit in compliance with Section 2.02, shall execute and deliver temporary Receipts which are printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the persons executing such Receipts may determine, as evidenced by their execution of such Receipts. If temporary Receipts are issued, the Company and the Depositary will cause definitive Receipts to be prepared without unreasonable delay. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at an office described in the second last paragraph of Section 2.02, without charge to the holder. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts. Such exchange shall be made at the Company's expense and without any charge to the holder thereof. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Agreement, and with respect to the Preferred Stock deposited hereunder, as definitive Receipts.

Receipts shall be executed by the Company and authenticated by the Depositary by the manual signature of a duly authorized officer of the Depositary; PROVIDED, HOWEVER, that such signature may be a facsimile if a Registrar for the Receipts (other than the Depositary) shall have been appointed and such Receipts are countersigned by manual signature of a duly authorized officer of the Registrar. No Receipt shall be entitled to any benefits under this

Agreement or be valid or obligatory for any purpose unless it shall have been executed manually by a duly authorized officer of the Depositary or, if a Registrar for the Receipts (other than the Depositary) shall have been appointed, by manual or facsimile signature of a duly authorized officer of the Depositary and countersigned manually by a duly authorized officer of such Registrar. The Depositary or, if a Registrar (other than the Depositary) shall have been appointed, the Registrar shall record on its books each Receipt so signed and delivered as hereinafter provided.

Except as the Depositary may otherwise determine, Receipts shall be in denominations of any number of whole Depositary Shares. All Receipts shall be dated the date of their issuance.

Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Agreement as may be required by the Depositary or required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange upon which the Preferred Stock, the Depositary Shares or the Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject.

Title to Depositary Shares evidenced by a Receipt that is properly endorsed, or accompanied by a properly executed instrument of transfer, shall be transferable by delivery with the same effect as in the case of a negotiable instrument; PROVIDED, HOWEVER, that until transfer of a Receipt shall be

registered on the books of the Depositary as provided in Section 2.04, the Depositary may, notwithstanding any notice to the contrary, treat the record holder thereof at such time as the absolute owner thereof for the purpose of determining the person entitled to distributions of dividends or other distributions or to any notice provided for in this Agreement and for all other purposes.

SECTION 2.02. DEPOSIT OF PREFERRED STOCK; EXECUTION AND DELIVERY OF RECEIPTS IN RESPECT THEREOF. Subject to the terms and conditions of this Agreement, the Company or any holder of Preferred Stock may from time to time deposit shares of Preferred Stock under this Agreement by delivery to the Depositary of (i) a certificate or certificates for the shares of Preferred Stock to be deposited, properly endorsed or accompanied, if required by the Depositary, by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with (ii) all certifications as may be required by the Depositary in accordance with the provisions of this Agreement, and (iii) a written order of the Company or such holder, as the case may be, directing the Depositary to execute and deliver to, or upon the written order of, the person or persons stated in such order a Receipt or Receipts for the number of Depositary Shares representing such deposited shares of Preferred Stock.

Upon receipt by the Depositary of a certificate or certificates for the shares of Preferred Stock deposited in accordance with the provisions of this Section 2.02, together with the other documents required, and upon registration of such shares of Preferred Stock on the books of the Company in the name of the Depositary or its nominee, the Depositary,

3

8

subject to the terms and conditions of this Agreement, shall execute and deliver, to or upon the order of the person or persons named in the written order delivered to the Depositary referred to in the first paragraph of this Section 2.02, a Receipt or Receipts for the number of whole Depositary Shares representing such shares of Preferred Stock and registered in such name or names as may be requested by such person or persons.

Certificates in the name of the Depositary for the deposited shares of Preferred Stock shall be held by the Depositary at the Depositary's Office or at such other place or places as the Depositary shall determine.

The Depositary shall execute and deliver such Receipt or Receipts at the Depositary's Office or such other offices, if any, as the Depositary may designate. Delivery at other offices shall be at the risk and expense of the person requesting such delivery. In each case, delivery will be made only upon payment by such person to the Depositary of all taxes and other governmental charges and any fees payable in connection with such deposit and the transfer of the deposited Preferred Stock.

The Company shall deliver to the Depositary from time to time such quantities of receipts as the Depositary may request to enable the Depositary to perform its obligations under this Agreement.

SECTION 2.03. REDEMPTION OF PREFERRED STOCK. Whenever the Company shall elect to redeem shares of Preferred Stock deposited hereunder in accordance with the provisions of the Certificate of Designation, the Company shall (unless otherwise agreed in writing with the Depositary) give the Depositary not less than 35 nor more than 60 days notice of (a) the date of such proposed redemption of the Preferred Stock, which notice shall be accompanied by a certificate from the Company stating that such redemption of the Preferred Stock is in accordance with the provisions of the Certificate of Designation and (b) the number of such shares of Preferred Stock held by the Depositary to be redeemed as hereinafter provided. On the date of such redemption, provided that the Company shall then have paid in full to the Depositary the redemption price of any deposited shares of Preferred Stock to be redeemed, plus any accrued and unpaid dividends thereon in accordance with the Certificate of Designation, the Depositary shall redeem the number of Depositary Shares representing such shares of Preferred Stock. The Depositary shall mail notice of such redemption of the Preferred Stock and the proposed simultaneous redemption of the number of Depositary Shares representing the deposited shares of Preferred Stock to be redeemed, first-class postage prepaid, as promptly as practicable upon receipt of such notice from the Company and not less than 30 and not more than 60 days prior to the date fixed for redemption of such Preferred Stock and Depositary Shares

(the "Redemption Date"), to the Record Holders of the Receipts evidencing the Depositary Shares to be so redeemed, at the addresses of such holders as they appear on the records of the Depositary; but neither failure to mail any such notice to one or more such holders nor any defect in any notice to one or more such holders shall affect the sufficiency of the proceedings for redemption as to other holders. Each such notice shall state: (i) the Redemption Date; (ii) the number of Depositary Shares to be redeemed and, if less than all the Depositary Shares held by any such holder are

4

9

to be redeemed, the number of such Depositary Shares held by such holder to be so redeemed; (iii) the redemption price; (iv) the place or places where Receipts evidencing Depositary Shares are to be surrendered for payment of the redemption price; and (v) that dividends in respect of the shares of Preferred Stock represented by the Depositary Shares to be redeemed will cease to accumulate on such Redemption Date. In case less than all the outstanding Depositary Shares are to be redeemed, the Depositary Shares to be so redeemed shall be selected by lot or pro rata as may be determined by the Depositary to be equitable.

Notice having been mailed by the Depositary as aforesaid, from and after the Redemption Date (unless the Company shall have failed to redeem the deposited shares of Preferred Stock to be redeemed by it as set forth in the Company's notice provided for in the preceding paragraph) all dividends in respect of the deposited shares of Preferred Stock so called for redemption shall cease to accumulate, the Depositary Shares being redeemed from such proceeds shall be deemed no longer to be outstanding, all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the redemption price) shall, to the extent of such Depositary Shares cease and terminate and, upon surrender in accordance with such notice of the Receipts evidencing any such Depositary Shares (properly endorsed or assigned for transfer, if the Depositary shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share equal to [specify fraction] of the redemption price per share paid in respect of the redeemed deposited shares of Preferred Stock plus all money and other property, if any, represented by such Depositary Shares, including all amounts paid by the Company in respect of dividends which on the Redemption Date have accumulated on the shares of Preferred Stock to be so redeemed and have not theretofore been paid.

If less than all the Depositary Shares evidenced by a single Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary a new Receipt evidencing the Depositary Shares evidenced by such prior Receipt and not called for redemption, together with the redemption payment.

SECTION 2.04. REGISTRATION OF TRANSFER OF RECEIPTS. Subject to the terms and conditions of this Agreement, the Depositary shall register on its books from time to time transfers of Receipts upon any surrender thereof by the holder in person or by duly authorized attorney, properly endorsed or accompanied by a properly executed instrument of transfer or endorsement together with evidence of the payment of any transfer taxes as may be required by law. Thereupon the Depositary shall execute a new Receipt or Receipts evidencing the same aggregate number of Depositary Shares as those evidenced by the Receipt or Receipts surrendered and deliver such new Receipt or Receipts to or upon the order of the person entitled thereto.

SECTION 2.05. SPLIT-UPS AND COMBINATIONS OF RECEIPTS; SURRENDER OF RECEIPTS AND WITHDRAWAL OF PREFERRED STOCK. Upon surrender of a Receipt or Receipts at the Depositary's Office or at such other offices as it may designate for the purpose of effecting a split-up or combination of such Receipt or Receipts, and subject to the terms and conditions of this Agreement, the Depositary shall execute and deliver a new Receipt or Receipts in the

5

10

authorized denomination or denominations requested, evidencing the aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered.

Any holder of a Receipt or Receipts representing any whole number of deposited shares of Preferred Stock may withdraw such shares of Preferred Stock and all money and other property, if any, represented thereby by surrendering such Receipt or Receipts at the Depositary's Office or at such other offices as the Depositary may designate for such withdrawals. Thereafter, without unreasonable delay, the Depositary shall deliver to such holder, or to the person or persons designated by such holder as hereinafter provided, the whole number of shares of Preferred Stock and all money and other property, if any, represented by the Receipt or Receipts so surrendered for withdrawal, but holders of such shares of Preferred Stock will not thereafter be entitled to deposit such shares of Preferred Stock hereunder or to receive Depositary Shares therefor. If a Receipt delivered by the holder to the Depositary in connection with such withdrawal shall evidence a number of Depositary Shares in excess of the number of deposited Depositary Shares representing the number of shares of Preferred Stock to be so withdrawn, the Depositary shall at the same time, in addition to such number of shares of Preferred Stock and such money and other property, if any, to be so withdrawn, deliver to such holder, or (subject to Section 2.02) upon his order, a new Receipt evidencing such excess number of Depositary Shares. Delivery of the shares of Preferred Stock and money and other property being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depositary may deem appropriate.

If the shares of Preferred Stock and the money and other property being withdrawn are to be delivered to a person or persons other than the Record Holder of the Receipt or Receipts being surrendered for withdrawal of the Preferred Stock, such holder shall execute and deliver to the Depositary a written order so directing the Depositary and the Depositary may require that the Receipt or Receipts surrendered by such holder for withdrawal of such shares of Preferred Stock be appropriately endorsed or accompanied by a properly executed instrument of transfer or endorsement.

Delivery of the shares of Preferred Stock and the money and other property, if any, represented by Receipts surrendered for withdrawal shall be made by the Depositary at the Depositary's Office, except that, at the request, risk and expense of the holder surrendering such Receipt or Receipts and for the account of the holder thereof, such delivery may be made at such other place as may be designated by such holder.

SECTION 2.06. LIMITATIONS ON EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND EXCHANGE OF RECEIPTS. As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Company may require payment to it of a sum sufficient for the payment (or, in the event that the Depositary or the Company shall have made such payment, the reimbursement to it) of any charges or expenses payable by the holder of a Receipt pursuant to Section 5.07 (including any tax or charge with respect to the Preferred Stock being deposited or withdrawn; provided, that the Company shall pay any documentary,

stamp or similar issue or transfer tax due on the issue of Common Stock upon conversion; and provided further that the holder of such Receipt shall pay the amount of any tax which is due if the shares are to be issued in a name other than the name of such holder), may require the production of evidence satisfactory to it as to the identity and genuineness of any signature and may also require compliance with such regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Agreement.

The deposit of shares of Preferred Stock may be refused, the delivery of Receipts against Preferred Stock may be suspended, the registration of transfer of Receipts may be refused and the registration of transfer, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of holders of Preferred Shares of the Company is closed or (ii) if any such action is deemed necessary or advisable by the Depositary, any agent of the Depositary or the Company at any time or from time to time because of any requirement of law or of any government or governmental body or commission or under any provision of this Agreement.

SECTION 2.07. LOST RECEIPTS, ETC. In case any Receipt shall be



mutilated, destroyed, lost or stolen, the Depositary in its discretion may execute and deliver a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt, or in lieu of and in substitution for such destroyed, lost or stolen Receipt, upon (i) the filing by the holder thereof with the Depositary of evidence satisfactory to the Depositary of such destruction or loss or theft of such Receipt, of the authenticity thereof and of his or her ownership thereof, and (ii) the furnishing of the Depositary with reasonable indemnification satisfactory to it and payment of any expenses (including fees, charges and expenses of the Depositary) in connection with such execution and delivery.

SECTION 2.08. CANCELLATION AND DESTRUCTION OF SURRENDERED RECEIPTS. All Receipts surrendered to the Depositary or any Depositary's Agent shall be cancelled by the Depositary. Except as prohibited by applicable law or regulation, the Company is authorized to destroy all Receipts so cancelled.

SECTION 2.09. PROHIBITION AGAINST PREFERRED STOCK, DEPOSITARY SHARES OR RECEIPT LENDING. The Depositary shall not lend any Preferred Stock, Depositary Shares or Receipts at any time held hereunder.

### ARTICLE III

#### Certain Obligations of Holders of Receipts and the Company

-----

SECTION 3.01. FILING PROOFS, CERTIFICATES, AND OTHER INFORMATION. Any holder of a Receipt may be required from time to time to file such proof of residence, or other matters or other information, to execute such certificates and to make such representations and warranties as the Depositary or the Company may reasonably deem necessary or proper. The Depositary or the Company may withhold the delivery, or delay the registration of transfer, redemption or exchange, of any Receipt or the withdrawal of the shares of

7

12

Preferred Stock represented by the Depositary Shares evidenced by any Receipt or the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof until such proof or other information is filed or such certificates are executed or such representations and warranties are made.

SECTION 3.02. PAYMENT OF TAXES OR OTHER GOVERNMENTAL CHARGES. Holders of Receipts shall be obligated to make payments to the Depositary of certain charges and expenses, as provided in Sections 2.06 and 5.07. Registration of transfer of any Receipt or any withdrawal of shares of Preferred Stock and all money or other property, if any, represented by the Depositary Shares evidenced by such Receipt may be refused until any such payment due is made, and any dividends, interest payments or other distributions may be withheld or any part of or all the shares of Preferred Stock or other property represented by the Depositary Shares evidenced by such Receipt and not theretofore sold may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder prior to such sale), and such dividends, interest payments or other distributions or the proceeds of any such sale may be applied to any payment of such charges or expenses, the holder of such Receipt remaining liable for any deficiency.

SECTION 3.03. REPRESENTATION AND WARRANTY AS TO PREFERRED STOCK. In the case of the initial deposit of the Preferred Stock and payment therefor, the Company and, in the case of subsequent deposits thereof, each person so depositing Preferred Stock under this Agreement, shall be deemed thereby to represent and warrant that the shares of Preferred Stock and each certificate therefor are validly issued, fully paid and nonassessable and that the person making such deposit is duly authorized to do so. Such representations and warranties shall survive the deposit of any shares of Preferred Stock and the issuance of Receipts.

SECTION 3.04. COVENANT AS TO RECEIPTS. The Company will take any necessary action to ensure that the Receipts, when issued, will represent legal and valid interests in the Preferred Stock. Such covenant shall survive the deposit of the Preferred Stock and the issuance of Receipts.

### ARTICLE IV

#### The Deposited Securities; Notices

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SECTION 4.01. CASH DISTRIBUTIONS. The Company hereby authorizes the Depositary to establish an account which shall be named the "\_\_\_\_\_ Account" (Account No. \_\_\_\_\_) for the deposit and safekeeping of any dividends, cash or any other distributions received by the Depositary in connection with the Preferred Stock. The \_\_\_\_\_ Account shall be [a trust account] [an interest bearing account] with [exclusive] right of withdrawal by [\_\_\_\_\_]. Whenever the Depositary shall receive any cash dividend or other cash distribution on deposited shares of Preferred Stock, the Depositary shall, subject to Sections 3.01 and 3.02, distribute to Record Holders of Receipts on the record date fixed pursuant to Section 4.04 such amounts of such dividend or distribution as

8

13

are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders; PROVIDED, HOWEVER, that in case the Company or the Depositary shall be required to withhold and shall withhold from any cash dividend or other cash distribution in respect of the Preferred Stock an amount on account of taxes or as otherwise required by law or court process, the amount made available for distribution or distributed in respect of Depositary Shares shall be reduced accordingly. In the event that the calculation of any such cash dividend or other such cash distribution to be paid to any Record Holder on the aggregate number of Receipts held by such holder results in an amount which is a fraction of a cent, the amount the Depositary shall distribute to such Record Holder shall be rounded to the next highest whole cent; and upon request of the Depositary, the Company shall pay the additional amount to the Depositary for distribution.

SECTION 4.02. DISTRIBUTIONS OTHER THAN CASH, RIGHTS, PREFERENCES OR PRIVILEGES. Whenever the Depositary shall receive any distribution other than cash, rights, preferences or privileges upon deposited shares of Preferred Stock, the Depositary shall, subject to Sections 3.01 and 3.02, distribute to Record Holders of Receipts on the record date fixed pursuant to Section 4.04 such amounts of the securities or property received by it as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution. If in the opinion of the Depositary such distribution cannot be made proportionately among such Record Holders, or if for any other reason (including any requirement that the Company or the Depositary withhold an amount on account of taxes or as otherwise required by law or court process) the Depositary deems, after consultation with the Company, such distribution not to be feasible, the Company shall adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale (at public or private sale) of the securities or property thus received, or any part thereof, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Sections 3.01 and 3.02, be distributed or made available for distribution, as the case may be, by the Depositary to Record Holders of Receipts as provided by Section 4.01 in the case of a distribution received in cash. The Depositary shall not make any distribution of such securities unless the Company shall have provided an opinion of counsel stating that such securities have been registered under the Securities Act of 1933, as amended (the "Act") or do not need to be registered.

SECTION 4.03. SUBSCRIPTION RIGHTS, PREFERENCES OR PRIVILEGES. If the Company shall at any time offer or cause to be offered to the persons in whose names the shares of Preferred Stock are recorded on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the Record Holders of Receipts in such manner as the Depositary may determine, either by the issuance to such Record Holders of warrants representing such rights, preferences or privileges or by such other method as may be approved by the Depositary in its discretion with the approval of the Company; PROVIDED, HOWEVER, that (i) if at the time of issuance or offer of any such rights, preferences or

9

privileges the Depositary determines that it is not lawful or (after consultation with the Company) not feasible to make such rights, preferences or privileges available to holders of Receipts by the issuance of warrants or otherwise, or (ii) if and to the extent so instructed by holders of Receipts who do not desire to exercise such rights, preferences or privileges, then the Depositary, in its discretion (with the approval of the Company, in any case where the Depositary has determined that it is not feasible to make such rights, preferences or privileges available), may, if applicable laws and the terms of such rights, preferences or privileges permit such transfer, sell such rights, preferences or privileges at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Sections 3.01 and 3.02, be distributed by the Depositary to the Record Holders of Receipts entitled thereto as provided by Section 4.01 in the case of a distribution received in cash. The Company shall not make any distribution of any such rights, preferences or privileges unless the Company shall have provided an opinion of counsel stating that such rights, preferences or privileges have been registered under the Act or do not need to be registered.

If registration under the Act of the securities to which any rights, preferences or privileges relate is required in order for holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Company will file promptly a registration statement pursuant to the Act with respect to such rights, preferences or privileges and securities and use its best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges. In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until the Company delivers to the Depositary an opinion of counsel stating either that (i) such a registration statement shall have become effective, or (ii) the offering and sale of such securities to such holders are exempt from registration under the provisions of the Act.

If any other action under the laws of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Company will use its best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

SECTION 4.04. NOTICE OF DIVIDENDS, ETC.; FIXING OF RECORD DATE FOR HOLDERS OF RECEIPTS. Whenever any cash dividend or other cash distribution shall become payable or any distribution other than cash shall be made, or if rights, preferences or privileges shall at any time be offered, with respect to the Preferred Stock, or whenever the Depositary shall receive notice of any meeting at which holders of shares of Preferred Stock are entitled to vote or of which holders of shares of Preferred Stock are entitled to notice, or whenever the Depositary and the Company shall decide it is appropriate, the Depositary shall in each such instance fix a record date (which shall be the same date as the record date fixed by the

10

15

Company with respect to the Preferred Stock) for the determination of the holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, or to give instructions for the exercise of voting rights at any such meeting, or who shall be entitled to notice of such meeting or for any other appropriate reasons.

SECTION 4.05. VOTING RIGHTS. Upon receipt of notice of any meeting at which the holders of shares of Preferred Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the Record Holders of Receipts a notice which shall be provided by the Company and which shall contain (i) such information as is contained in such notice of meeting and (ii) a statement that the holders of Receipts may, subject to any applicable restrictions, instruct the Depositary as to the exercise of the voting rights pertaining to the number of shares of Preferred Stock represented by their

respective Depositary Shares (including an express indication that instructions may be given to the Depositary to give a discretionary proxy to a person designated by the Company) and (iii) a brief statement as to the manner in which such instructions may be given. Upon the written request of the holders of Receipts on the relevant record date, the Depositary shall endeavor insofar as practicable to vote or cause to be voted, in accordance with the instructions set forth in such requests, the maximum whole number of shares of Preferred Stock represented by the Depositary Shares evidenced by all Receipts as to which any particular voting instructions are received. The Company hereby agrees to take all action which may be deemed necessary by the Depositary in order to enable the Depositary to vote such shares of Preferred Stock or cause such shares of Preferred Stock to be voted. In the absence of specific instructions from the holder of a Receipt, the Depositary will abstain from voting (but, at its discretion, not from appearing at any meeting with respect to such shares of Preferred Stock unless directed to the contrary by the holders of all the Receipts) to the extent of the number of shares of Preferred Stock represented by the Depositary Shares evidenced by such Receipt.

SECTION 4.06. CHANGES AFFECTING DEPOSITED PREFERRED STOCK AND RECLASSIFICATIONS, RECAPITALIZATIONS, ETC. Upon any change in par value or liquidation preference, split-up, combination or any other reclassification of the Preferred Stock, or upon any recapitalization, reorganization, merger, amalgamation or consolidation affecting the Company or to which it is a party, the Depositary may in its discretion with the approval of, and shall upon the instructions of, the Company, and (in either case) in such manner as the Depositary may deem equitable, (i) make such adjustments as are certified by the Company in (x) the fraction of an interest represented by one Depositary Share in one share of Preferred Stock, and (y) the ratio of the redemption price per Depositary Share to the redemption price per share of Preferred Stock, in each case as may be necessary fully to reflect the effects of such changes in par value or liquidation preference, split-up, combination or other reclassification of the Preferred Stock, or of such recapitalization, reorganization, merger, amalgamation or consolidation, and (ii) treat any securities which shall be received by the Depositary in exchange for or upon conversion of or in respect of deposited shares of Preferred Stock as new deposited securities so received in exchange for or upon conversion or in respect of such shares of Preferred Stock. In any such case the

11

16

Depositary may in its discretion, with the approval of the Company, execute and deliver additional Receipts, or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited securities. Anything to the contrary herein notwithstanding, holders of Receipts shall have the right from and after the effective date of any such change in par value or liquidation preference, split-up, combination or other reclassification of the Preferred Stock or any such recapitalization, reorganization, merger, amalgamation or consolidation to surrender such Receipts to the Depositary with instructions to convert, exchange or surrender the shares of Preferred Stock represented thereby only into or for, as the case may be, the kind and amount of shares of Preferred Stock and other securities and property and cash into which the Preferred Stock represented by such Receipts might have been converted or for which such Preferred Stock might have been exchanged or surrendered immediately prior to the effective date of such transaction.

SECTION 4.07. INSPECTION OF REPORTS. The Depositary shall make available for inspection by holders of Receipts at the Depositary's Office during normal business hours, and at such other places as it may from time to time deem advisable, any reports and communications received from the Company which are received by the Depositary as the holder of Preferred Stock and are generally available to holders of Preferred Stock.

SECTION 4.08. LISTS OF RECEIPT HOLDERS. Promptly upon request from time to time by the Company, the Depositary shall furnish to it a list, as of a recent date, of the names, addresses and holdings of Depositary Shares of all persons in whose names Receipts are registered on the books of the Depositary.

SECTION 4.09. TAX AND REGULATORY COMPLIANCE. The Depositary shall be responsible for (i) preparation and mailing of all applicable tax forms for all open and closed accounts and (ii) all applicable foreign and domestic tax withholding, including without limitation the mailing of W-9 forms to new holders of Receipts without a certified taxpayer identification number, the processing of certified W-9 forms, the preparation and filing of state information returns and the provision of escheatment services.

SECTION 4.10. WITHHOLDING. Notwithstanding any other provision of this Deposit Agreement, in the event that the Depositary determines that any distribution in property is subject to any tax which the Depositary is obligated to withhold, the Depositary may dispose of all or a portion of such property in such amounts and in such manner as the Depositary deems necessary and practicable to pay such taxes, by public or private sale, and the Depositary shall distribute the net proceeds of any such sale or the balance of any such property after deduction of such taxes to the holders of Receipts entitled thereto in proportion to the number of Depositary Shares held by them respectively.

12

17

ARTICLE V

The Depositary, the Depositary's Agents, the Registrar and the Company  
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SECTION 5.01. MAINTENANCE OF OFFICES, AGENCIES AND TRANSFER BOOKS BY THE DEPOSITARY; REGISTRAR. Upon execution of this Agreement, the Depositary shall maintain at the Depositary's Office, facilities for the execution and delivery, registration and registration of transfer, surrender and exchange of Receipts, and at the offices of the Depositary's Agents, if any, facilities for the delivery, registration of transfer, surrender and exchange of Receipts, all in accordance with the provisions of this Agreement.

The Depositary shall keep books at the Depositary's Office for the registration and registration of transfer of Receipts, which books at all reasonable times during normal business hours shall be open for inspection by the Record Holders of Receipts to the extent provided by applicable law; PROVIDED, HOWEVER, that any such holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such person's interest as an owner of Depositary Shares evidenced by Receipts.

The Depositary may close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

If the Receipts or the Depositary Shares evidenced thereby or the Preferred Stock represented by such Depositary Shares shall be listed on the New York Stock Exchange, the Depositary may, with the approval of the Company, appoint a Registrar for registration of such Receipts or Depositary Shares in accordance with any requirements of such Exchange. Such Registrar (which may be the Depositary if so permitted by the requirements of such Exchange) may be removed and a substituted registrar appointed by the Depositary upon the request or with the approval of the Company. If the Receipts, the Depositary Shares or the Preferred Stock shall be listed on one or more other stock exchanges, the Depositary will, at the request and expense of the Company, arrange such facilities for the delivery, registration, registration of transfer, surrender and exchange of the Receipts, the Depositary Shares or the Preferred Stock as may be required by law or applicable stock exchange regulation.

SECTION 5.02. PREVENTION OF OR DELAY IN PERFORMANCE BY THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR OR THE COMPANY. Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall incur any liability to any holder of any Receipt if by reason of any provision of any present or future law, or regulation thereunder, of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar, by reason of any provision, present or future, of the Company's Restated Articles of Organization, as amended (including the Certificate of Designation) or by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, the Registrar or the Company shall be prevented or forbidden from, or subjected to any penalty on account of, doing or performing any act or thing which the terms of this Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any

Registrar or the Company incur any liability to any holder of a Receipt (i) by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing which the terms of this Deposit Agreement provide shall or may be done or performed or (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in this Agreement except, in case of any such exercise or failure to exercise discretion not caused as aforesaid, if caused by the gross negligence or willful misconduct of the party charged with such exercise or failure to exercise.

SECTION 5.03. OBLIGATIONS OF THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR AND THE COMPANY. Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company assumes any obligation or shall be subject to any liability under this Agreement or any Receipt to holders of Receipts other than for its gross negligence or willful misconduct.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall be under any obligation under this Agreement to appear in, prosecute or defend any action, suit or other proceeding in respect of deposited shares of Preferred Stock, the Depositary Shares or the Receipts that in its opinion may involve it in expense or liability unless indemnity satisfactory to it against all expense and liability be furnished as often as may be required.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall be liable for any action or any failure to act by it in reliance upon the advice of legal counsel or written advice of accountants, or information from any person presenting shares of Preferred Stock for deposit, any holder of a Receipt or any other person believed by it in good faith to be competent to give such advice or information. The Depositary, any Depositary's Agent, any Registrar and the Company may each rely and shall each be protected in acting upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the proper party or parties.

In the event the Depositary shall receive conflicting claims, requests or instructions from any holders of Receipts, on the one hand, and the Company, on the other hand, the Depositary shall notify the Company and thereafter, absent instructions to the contrary from the Company, shall be entitled to act on such claims, requests or instructions received from the Company, and shall be entitled to the full indemnification set forth in Section 5.06 hereof in connection with any action so taken.

Notwithstanding the first paragraph of this Section 5.03, the Depositary shall not be responsible for any failure to carry out any instruction to vote any of the deposited shares of Preferred Stock or for the manner or effect of any such vote made, as long as any such action or non-action is in good faith or in accordance with this Agreement. The Depositary undertakes, and any Registrar shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement, and no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or any Registrar. The Depositary and its affiliates, the Depositary's Agents and any Registrar may

own, buy, sell, and deal in any class of securities of the Company and its affiliates and in Receipts or Depositary Shares or become pecuniarily interested in any transaction in which the Company or its affiliates are interested or contract with or lend money to or otherwise act as fully and as freely as if it were not the Depositary or the Depositary's Agent or Registrar hereunder. The Depositary may also act as transfer agent or registrar of any of the securities of the Company and its affiliates.

It is intended that neither the Depositary nor any Depositary's Agent, acting as the Depositary Agent, shall be deemed to be an "issuer" of the Receipts under the Federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary and any

Depository's Agent are acting only in a ministerial capacity as Depository for the Preferred Stock.

Neither the Depository (or its officers, directors, employees or agents) nor any Depository's Agent makes any representation or has any responsibility as to the validity of the Registration Statement pursuant to which the Depository Shares are registered under the Act, the Preferred Stock, the Depository Shares or the Receipts (except for its counter-signatures thereon) or any instruments referred to therein or herein, or as to the correctness of any statement made therein or herein.

The Depository assumes no responsibility for the correctness of the description that appears in the Receipts, which can be taken as a statement of the Company summarizing certain provisions of this Agreement. Notwithstanding any other provision herein or in the Receipts, the Depository makes no warranties or representations as to the validity, genuineness or sufficiency of any Preferred Stock at any time deposited with the Depository hereunder or of the Depository Shares, as to the validity or sufficiency of this Agreement, as to the value of the Depository Shares or as to any right, title or interest of the Record Holders of Receipts in and to the Depository Shares. The Depository shall not be accountable for the use or application by the Company of the Depository Shares or the Receipts or the proceeds thereof.

SECTION 5.04. RESIGNATION AND REMOVAL OF THE DEPOSITARY; APPOINTMENT OF SUCCESSOR DEPOSITARY. The Depository may at any time resign as Depository hereunder by notice of its election to do so delivered to the Company, such resignation to take effect upon the appointment of a successor Depository and its acceptance of such appointment as herein after provided.

The Depository may at any time be removed by the Company by notice of such removal delivered to the Depository, such removal to take effect upon the appointment of a successor Depository and its acceptance of such appointment as herein after provided.

In case at any time the Depository acting hereunder shall resign or be removed, the Company shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Depository, which shall be a bank or trust company having its principal office in the United States of America and having a combined capital and

surplus of at least \$50,000,000. If no successor Depository shall have been so appointed and have accepted appointment within 60 days after delivery of such notice, the resigning or removed Depository may petition any court of competent jurisdiction for the appointment of a successor Depository. Every successor Depository shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder, and thereupon such successor Depository, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depository under this Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in the Preferred Stock and any moneys or property held hereunder to such successor, and shall deliver to such successor a list of the Record Holders of all outstanding Receipts. Any successor Depository shall promptly mail notice of its appointment to the Record Holders of Receipts.

Any corporation into or with which the Depository may be merged, consolidated or converted shall be the successor of such Depository without the execution or filing of any document or any further act, and notice thereof shall not be required hereunder. Such successor Depository may authenticate the Receipts in the name of the predecessor Depository or in the name of the successor Depository.

SECTION 5.05. CORPORATE NOTICES AND REPORTS. The Company agrees that it shall deliver to the Depository and the Depository shall, in reliance upon the Company's written instructions, promptly after receipt thereof, forward to the Record Holders of Receipts all notices and reports and other communications from the Company (including without limitation financial statements) which are delivered to the Depository, and which in the judgment of the Company are required by law, by the rules of any national securities exchange upon which the Preferred Stock, the Depository Shares or the Receipts



are listed or by the Company's Restated Articles of Organization, as amended (including the Certificate of Designation), to be furnished by the Company to holders of shares of Preferred Stock. Such transmission will be to the addresses for Record Holders in the Depository's books and will be at the Company's expense and the Company will provide the Depository with such number of copies as the Depository may reasonably request.

SECTION 5.06. INDEMNIFICATION.

The Company shall indemnify the Depository (including its directors, officers, employees and agents), any Depository's Agent and any Registrar against, and hold each of them harmless from, any loss, liability or expense (including fees and expenses of counsel and the costs and expenses of defending itself) that may arise out of (i) acts performed or omitted in connection with this Deposit Agreement and the Receipts (a) by the Depository, any Registrar or any of their respective agents (including any Depository's Agent), except for any liability arising out of gross negligence or bad faith on the respective parts of any such person or persons, or (b) by the Company or any of its agents, or (ii) the offer, sale or registration of the Receipts, the Depository Shares or the Preferred Stock pursuant to the

provisions hereof. This indemnification shall survive the termination of this Agreement and, as to the Depository, the appointment of a successor thereto in any function.

SECTION 5.07. CHARGES AND EXPENSES. The Company shall pay all transfer and other taxes and governmental charges arising solely from the existence of the depository arrangements. The Company shall pay all charges of the Depository in connection with the initial deposit of the Preferred Stock and the initial issuance of the Depository Shares, redemption of the Preferred Stock at the option of the Company and all withdrawals of shares of the Preferred Stock by owners of Depository Shares. All other transfer and other taxes and governmental charges shall be at the expense of holders of Depository Shares. If, at the request of a holder of Receipts, the Depository incurs charges or expenses for which it is not otherwise liable hereunder, such holder will be liable for such charges and expenses. The Company agrees to pay all other reasonable and customary charges and expenses of the Depository and any Depository's Agent hereunder and of any Registrar (including, in each case, fees and expenses of counsel) incident to the performance of their respective obligations hereunder, including any other reasonable and customary charges and expenses incurred by the Depository under the last sentence of the second paragraph of Section 6.02.

ARTICLE VI  
Amendment and Termination  
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SECTION 6.01. AMENDMENT. The form of the Receipts and any provisions of this Agreement may at any time and from time to time be amended by agreement between the Company and the Depository in any respect which they may deem necessary or desirable; PROVIDED, HOWEVER, that no such amendment (other than any change in the fees of any Depository, Registrar or Depository's Agent, which shall go into effect not sooner than three months after notice thereof to the holders of the Receipts) that shall materially and adversely alter the rights of the holders of Receipts shall be effective unless such amendment shall have been approved by the holders of at least a majority of the Depository Shares then outstanding. Any amendment that shall impose any fees, taxes or charges (other than fees and charges provided for herein or in the Receipts), or that shall otherwise prejudice any substantial existing right of holders of Receipts, shall not become effective as to outstanding Receipts until the expiration of 30 days after notice of such amendment shall have been given to the Record Holders of outstanding Receipts. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by this Agreement as amended thereby.

SECTION 6.02. TERMINATION. This Agreement may be terminated by the Company or the Depository only after (a) (i) all outstanding Depository Shares shall have been redeemed pursuant to Section 2.03 or surrendered pursuant to Section 2.05 or (ii) there shall have been made a final distribution in respect of the Preferred Stock in connection with any liquidation, dissolution or

winding up of the Company and such distribution shall have been distributed to the holders of Depositary Shares pursuant to Section 4.01 or 4.02, as applicable and (b) reasonable notice has been given to any remaining holders of Receipts.

17

22

If any Receipts shall remain outstanding after the date of termination of this Agreement, the Depositary thereafter shall discontinue the transfer of Receipts, shall suspend the distribution of dividends to the holders thereof and shall not give any further notices (other than notice of such termination) or perform any future acts under this Agreement, except that the Depositary shall continue to collect dividends and other distributions pertaining to Preferred Stock, shall sell rights, preferences or privileges as provided in this Agreement and shall continue to deliver the Preferred Stock and any money and other property represented by Receipts upon surrender thereof by the holders thereof. After the expiration of two years from the date of termination, the Depositary shall remit to the Company the remaining Preferred Stock and any money and other property represented by Receipts that have not therefore been surrendered (including any interest earned on such amounts during such two year period), along with all registers and records relating thereto. After such remittance, the Depositary shall be discharged from all obligations under this Deposit Agreement.

Upon the termination of this Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary, any Depositary's Agent and any Registrar under Sections 5.06 and 5.07.

ARTICLE VII  
Miscellaneous  
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SECTION 7.01. COUNTERPARTS. This Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Deposit Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Deposit Agreement. Copies of this Deposit Agreement shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection during business hours at the Depositary's Office and the respective offices of the Depositary's Agents, if any, by any holder of a Receipt.

SECTION 7.02. HOLDERS OF RECEIPTS ARE PARTIES; EXCLUSIVE BENEFIT OF PARTIES. The holders of Receipts from time to time shall be parties to this Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance of delivery thereof. This Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

SECTION 7.03. INVALIDITY OF PROVISIONS. In case any one or more of the provisions contained in this Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby.

18

23

SECTION 7.04. NOTICES. Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram or telex confirmed by letter, addressed to the Company at 111 Powdermill Road, Maynard, MA 01754-1418, attention of Ilene B. Jacobs, Vice President and Treasurer (MS02-2/F23), with a copy to Gail S. Mann, Esq., Secretary and Clerk

(MS02-3/F13), or at any other address of which the Company shall have notified the Depositary in writing.

Any and all notices to be given to the Depositary hereunder (i) by the Company shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram or telex confirmed by letter, addressed to the Depositary, at 120 Wall Street, 13th Floor, New York, New York 10043, Attn: John Reasor; or (ii) by a Record Holder shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram or telex confirmed by letter, addressed to the Depositary, at 111 Wall Street, 5th Floor, New York, New York 10043, or at any other address of which the Depositary shall have notified the Company in writing.

Any and all notices to be given to any Record Holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram or telex confirmed by letter, addressed to such Record Holder at the address of such Record Holder as it appears on the books of the Depositary, or if such holder shall have filed with the Depositary a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or by telegram or telex shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a telegram or telex message) is deposited, postage prepaid, in a post office letter box. The Depositary or the Company may, however, act upon any telegram or telex message received by it from the other or from any holder of a Receipt, notwithstanding that such telegram or telex message shall not subsequently be confirmed by letter or as aforesaid.

SECTION 7.05. DEPOSITARY'S AGENTS. The Depositary may from time to time appoint Depositary's Agents to act in any respect for the Depositary for the purposes of this Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will notify the Company of any such action. The Company hereby also appoints the Depositary as Registrar and Transfer Agent in respect of the Receipts and the Depositary hereby accepts such appointments.

SECTION 7.06. GOVERNING LAW. This Agreement and the Receipts and all rights hereunder and thereunder and provisions hereof and thereof shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts.

19

24

SECTION 7.07. INSPECTION OF AGREEMENT. Copies of this Agreement shall be filed with the Depositary and shall be open to inspection during business hours at the Depositary's office by any holder of a Receipt.

SECTION 7.08. HEADINGS. The headings of articles and sections in this Agreement and in the form of the Receipt set forth in Exhibit A hereto have been inserted for convenience only and are not to be regarded as a part of this Agreement or the Receipts or have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

SECTION 7.09. BOARD OF DIRECTORS. All references to any actions to be taken by the Company's Board of Directors shall be deemed to include actions taken by either the Company's Board of Directors or an authorized committee thereof.

20

25

IN WITNESS WHEREOF, the Company and the Depositary have duly executed this Agreement as of the day and year first above set forth, and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery

of Receipt issued in accordance with the terms hereof.

DIGITAL EQUIPMENT CORPORATION

By \_\_\_\_\_

Attested by

\_\_\_\_\_  
[SEAL]

CITIBANK, N.A., as Depositary

By \_\_\_\_\_

Attested by

\_\_\_\_\_  
[SEAL]

DEPOSITARY RECEIPT

FOR DEPOSITARY SHARES EACH REPRESENTING A [SPECIFY PERCENTAGE]  
INTEREST IN A SHARE OF \_\_\_\_\_ PREFERRED STOCK, [\_\_\_%] SERIES (\$1.00 PAR  
VALUE) OF

DIGITAL EQUIPMENT CORPORATION

(INCORPORATED UNDER THE LAWS OF THE  
COMMONWEALTH OF MASSACHUSETTS)

\_\_\_\_\_ DEPOSITARY SHARES

No. \_\_\_\_\_ Each Depositary Share Represents A \_\_\_\_\_% Interest In A Share  
of \_\_\_\_\_ Preferred Stock [\_\_\_%] Series (\$1.00 Par Value)

See Reverse For Certain Definitions

1. Citibank, N.A., a national banking association duly organized  
and existing under the laws of the United States of America, with an office at  
the time of the execution of the Deposit Agreement (as defined below) at 111  
Wall Street, 5th Floor, New York, NY 10043, as Depositary (the "Depositary"),  
hereby certifies that

is the registered owner of \_\_\_\_\_ DEPOSITARY SHARES

("Depositary Shares") each Depositary Share representing a [specify percentage]  
(as such fraction may from time to time be adjusted in the event of certain  
amendments to the Company's Restated Articles of Organization, as amended)  
interest in one share of \_\_\_\_\_ Preferred Stock [\_\_\_%] Series, (\$1.00 Par  
Value) (the "Preferred Stock"), of Digital Equipment Corporation, a corporation  
duly organized and existing under the laws of The Commonwealth of Massachusetts  
(the "Company"). Subject to the terms of the Deposit Agreement each owner of a  
Depositary Share is entitled proportionately through the Depositary to all  
rights and preferences of the Preferred Stock relating thereto including

dividends, voting, redemption and liquidation rights contained in the certificate of vote adopted by the Company's Board of Directors or a duly authorized committee thereof setting forth the number, terms, powers, designations, rights, preferences, qualifications, restrictions and limitations of the Preferred Stock (the "Certificate of Designation"), copies of which are on file at the Depository's Corporate Office.

27

2. The Deposit Agreement. Depository Receipts (the "Depository Receipts" or the "Receipts"), of which this Receipt is one, are made available upon the terms and conditions set forth in the Deposit Agreement dated as of \_\_\_\_\_, 1994 (the "Deposit Agreement"), among the Company, the Depository and all holders from time to time of the Receipts. The Deposit Agreement (copies of which are on file at the Depository's Corporate Office) sets forth the rights of holders of the Receipts and the rights and duties of the Depository and the Company in respect of the Preferred Stock deposited from time to time held thereunder. The statements made on the face and the reverse of this Receipt are summaries of certain provisions of the Deposit Agreement and are subject to the detailed provisions thereof, to which reference is hereby made. Unless otherwise expressly herein provided, all defined terms used herein shall have the meanings ascribed thereto in the Deposit Agreement.

Reference is hereby made to the provisions set forth under the caption "Terms and Conditions (Continued)" on the reverse hereof. Such provisions shall for all purposes have the same effect as though fully set forth at this place.

This Depository Receipt shall not be entitled to any benefits under the Deposit Agreement or be valid or obligatory for any purposes unless this Depository Receipt shall have been authenticated manually or, if a Registrar for the Receipts (other than the Depository) shall have been appointed, by facsimile signature of a duly authorized signatory of the Depository, and, if authenticated by facsimile signature of the Depository, shall have been countersigned manually by such Registrar by the signature of a duly authorized signatory.

THE DEPOSITARY IS NOT RESPONSIBLE FOR THE VALIDITY OF ANY DEPOSITED PREFERRED STOCK. THE DEPOSITARY ASSUMES NO RESPONSIBILITY FOR THE CORRECTNESS OF THE FOLLOWING DESCRIPTION WHICH CAN BE TAKEN AS A STATEMENT OF THE COMPANY SUMMARIZING CERTAIN PROVISIONS OF THE DEPOSIT AGREEMENT. THE DEPOSITARY MAKES NO WARRANTIES OR REPRESENTATIONS AS TO THE VALIDITY, GENUINNESS OR SUFFICIENCY OF ANY PREFERRED STOCK AT ANY TIME DEPOSITED WITH THE DEPOSITARY HEREUNDER OR OF THE DEPOSITARY SHARES, AS TO THE VALIDITY OR SUFFICIENCY OF THE DEPOSIT AGREEMENT, AS TO THE VALUE OF THE DEPOSITARY SHARES OR AS TO ANY RIGHT, TITLE OR INTEREST OF THE RECORD HOLDERS OF THE DEPOSITARY RECEIPTS TO THE DEPOSITARY SHARES.

28

The authorized capital stock of the Company consists of preferred stock, issued or to be issued in series, and common stock. The shares of each class and series now authorized to be issued have the preferences, voting powers, qualifications and special and relative rights set forth in the Restated Articles of Organization of the Company, as amended. The Company will furnish to the holder of this certificate upon written request addressed and mailed to the Company, care of the transfer agent, and without charge, a copy of the full text of such preferences, powers, qualifications and rights. Dated  
Authentication \_\_\_\_\_ Countersigned \_\_\_\_\_

Citibank, N.A.,

Citibank, N.A.,

As Depository

As Registrar

By

By

Authorized Signatory

Authorized Signatory

[BACK OF CERTIFICATE]

TERMS AND CONDITIONS CONTINUED

3. Redemption of Preferred Stock. Whenever the Company shall elect to redeem shares of Preferred Stock in accordance with the provisions of its Restated Articles of Organization, as amended, the Company shall (unless otherwise agreed in writing with the Depository) give the Depository not less than 35 nor more than 60 days notice of (a) the date of such proposed

redemption of the Preferred Stock, which notice shall be accompanied by a certificate from the Company stating that such redemption of the Preferred Stock is in accordance with the provisions of the Certificate of Designation and (b) the number of such shares of Preferred Stock held by the Depositary to be redeemed as hereinafter provided. On the date of such redemption, provided that the Company shall then have paid in full to the Depositary the redemption price of any deposited shares of Preferred Stock to be redeemed, plus any accrued and unpaid dividends thereon in accordance with the Certificate of Designation, the Depositary shall redeem the number of Depositary Shares representing such shares of Preferred Stock. The Depositary shall mail notice of such redemption of the Preferred Stock and the proposed simultaneous redemption of the number of Depositary Shares representing the deposited shares of Preferred Stock to be redeemed, first-class postage prepaid, as promptly as practicable upon receipt of such notice from the Company and not less than 30 and not more than 60 days prior to the date fixed for redemption of such Preferred Stock and Depositary Shares (the "Redemption Date"), to the record holders of the Receipts evidencing the Depositary Shares to be so redeemed, at the addresses of such holders as they appear on the records of the Depositary; but neither failure to mail any such notice to one or more such holders nor any defect in any notice to one or more such holders shall affect the sufficiency of the proceedings for redemption as to other holders. Each such notice shall state: (i) the Redemption Date; (ii) the number of Depositary Shares to be redeemed and, if less than all the Depositary Shares held by any such holder are to be redeemed, the number of such Depositary Shares held by such holder to be so redeemed; (iii) the redemption price; (iv) the place or places where Receipts evidencing Depositary Shares are to be surrendered for payment of the redemption price; and (v) that dividends in respect of the shares of Preferred Stock represented by the Depositary Shares to be redeemed will cease to accumulate on such Redemption Date. In case less than all the outstanding

3

29

Depositary Shares are to be redeemed, the Depositary Shares to be so redeemed shall be selected by lot or pro rata as may be determined by the Depositary to be equitable. Notice having been mailed by the Depositary as aforesaid, from and after the Redemption Date (unless the Company shall have failed to redeem the deposited shares of Preferred Stock to be redeemed by it as set forth in the Company's notice provided for in the preceding paragraph) all dividends in respect of the deposited shares of Preferred Stock so called for redemption shall cease to accumulate, the Depositary Shares being redeemed from such proceeds shall be deemed no longer to be outstanding, all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the redemption price) shall, to the extent of such Depositary Shares cease and terminate and, upon surrender in accordance with such notice of the Receipts evidencing any such Depositary Shares (properly endorsed or assigned for transfer, if the Depositary shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share equal to [specify fraction] of the redemption price per share paid in respect of the redeemed deposited shares of Preferred Stock plus all money and other property, if any, represented by such Depositary Shares, including all amounts paid by the Company in respect of dividends which on the Redemption Date have accumulated on the shares of Preferred Stock to be so redeemed and have not theretofore been paid.

If less than all the Depositary Shares evidenced by a single Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary a new Receipt evidencing the Depositary Shares evidenced by such prior Receipt and not called for redemption, together with the redemption payment.

4. Transfer, Split-ups, Combinations. This Depositary Receipt is transferrable on the books of the Depositary upon surrender hereof to the Depositary, properly endorsed or accompanied by a properly executed instrument of transfer, and thereupon the Depositary shall execute a new Depositary Receipt to or upon the order of the person entitled thereto, as provided in the Deposit Agreement. This Receipt may be split into other Receipts or combined with other Receipts into one Receipt representing the same aggregate number of Depositary Shares as the Receipt or Receipts surrendered.

5. Withdrawal of Preferred Stock. The holder of a Depositary Receipt or Receipts representing any number of whole shares of Preferred Stock may withdraw the Preferred Stock represented thereby by surrendering such Depositary Receipt or Receipts at the Corporate Office or at any other office that may be designated for the purpose pursuant to Section 2.05 of the Deposit Agreement. Thereafter, without unreasonable delay, the Depositary shall

deliver to such holder, or to the person or persons designated by such holder, the number of whole shares of

4

30

Preferred Stock represented by the Depositary Receipt of Receipts so surrendered for withdrawal, but holders of such whole shares of Preferred Stock will not thereafter be entitled to deposit such Preferred Stock hereunder or to receive Depositary Shares therefor. If a Depositary Receipt delivered by the holder to the Depositary in connection with such withdrawal shall evidence a number of Depositary Shares in excess of the number of Depositary Shares representing the number of whole shares of Preferred Stock to be so withdrawn, the Depositary shall, at the same time, in addition to such number of whole shares of Preferred Stock to be so withdrawn, deliver to such holder, or upon his order, a new Depositary Receipt evidencing such excess number of Depositary Shares.

6. Suspension of Delivery, Transfer, etc. The transfer or surrender of this Depositary Receipt may be suspended during any period when (i) the register of holders of Preferred Stock of the Company is closed or, (ii) any such action is deemed necessary or advisable by the Depositary, any agent of the Depositary, or the Company at any time or from time to time because of any requirement of law or of any government or governmental body or commission, or under any provision of the Deposit Agreement.

7. Payment of Taxes or Other Governmental Charges. The Company shall pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. The Company shall pay all charges of the Depositary in connection with the initial deposit of the Preferred Stock, the initial issuance of the Depositary Receipts, and any redemption of the Preferred Stock at the option of the Company. All other transfer and other taxes and governmental charges shall be at the expense of the holders of Depositary Receipts.

8. Amendment. The Form of the Depositary Receipt and any provisions of the Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect which they may deem necessary or desirable; provided, however, that no such amendment which shall materially and adversely alter the rights of the holders of the Depositary Receipts shall be effective unless such amendment shall have been approved by the holders of at least a majority of the Depositary Shares then outstanding.

9. Charges of Depositary. The Company will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements and all charges of the Depositary in connection with the initial Deposit of the Preferred Stock and the initial issuance of the Depositary Shares and redemption of the Preferred Stock, at the option of the Company, and all withdrawals of shares of Preferred Stock by owners of Depositary Shares. All other transfer and other taxes and other governmental charges shall be at the expense of holders of Depositary Receipts. All other charges and expenses of the Depositary and any agent of the Depositary will be paid upon consultation and agreement between the Depositary and the Company.

10. Title to Receipts. The Depositary Receipts (and the Depositary Shares evidenced thereby) when properly endorsed or accompanied by a properly endorsed instrument of transfer, are transferrable by delivery with the same effect as in the case of a negotiable instrument, provided, however, that the transfer of the Depositary Receipt shall be registered on the books of the Depositary. The Depositary may, notwithstanding any notice to the contrary, treat the record holder hereof at such time as the absolute owner hereof for the purpose of determining the person entitled to any distributions of dividends or other

5

31

distributions or to any notice provided for in the Deposit Agreement, and for all other purposes.

11. Dividends and Distributions. Whenever the Depositary receives



any cash dividend or other cash distribution on the Preferred Stock, the Depositary will, subject to the provisions of the Deposit Agreement, make such distribution to the Depositary Receipt holders as nearly as practicable in proportion to the number of Depositary Shares held by them; provided, however, that, in the event that the calculation of any such cash dividend or other such cash distribution to be paid to any record holder on the aggregate number of Depositary Receipts held by such holder results in an amount which is a fraction of a cent, the amount the Depositary shall distribute to such record holder shall be rounded to the next highest whole cent; and upon request of the Depositary, the Company shall pay the additional amount to the Depositary for distribution. Whenever the Depositary shall receive any distribution other than cash, rights, preferences or privileges upon deposited shares of Preferred Stock, the Depositary shall distribute to record holders of Depositary Receipts on the fixed record date such amounts of the securities or property received by it as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Depositary Receipts held by such holders, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution.

12. Fixing of Record Date. Whenever any cash dividend or other cash distribution shall become payable or shall be made or any distribution other than cash shall be made pursuant to the Company's Restated Articles of Organization, as amended, or if rights, preferences or privileges shall anytime be offered with respect to Preferred Stock, or whenever the Depositary shall receive notice of any meeting at which holders of Preferred Stock are entitled to vote or of which holders of Preferred Stock are entitled to notice, or whenever the Depositary and the Company shall decide it is appropriate, the Depositary shall in each such instance fix a record date (which shall be the record date fixed by the Company with respect to the Preferred Stock) for the determination of the holders of Depositary Receipts who shall be entitled to receive such dividend, distribution, right, preferences or privileges or the net proceeds of the sale thereof, or to give instructions for the exercise of voting rights at any such meeting, or who shall be entitled to notice of such meeting.

13. Voting Rights. Upon receipt of notice of any meeting at which holders of Preferred Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of Depositary Receipts a notice which shall contain such information as is contained in such notice of meeting and a statement informing holders of Depositary Receipts that they may instruct the Depositary as to the exercise of the voting rights pertaining to the amount of Preferred Stock underlying their respective Depositary Shares and a brief statement as to the manner in which such instructions may be given. Upon the written request of a holder of a Depositary Receipt on such record date, the Depositary shall endeavor insofar as practicable to vote or cause to be voted the amount of Preferred Stock underlying the Depositary Shares evidenced by such Receipts in accordance with the instructions set forth in such request. In the absence of specific instructions from

the holder of a Depositary Receipt, the Depositary will abstain from voting the number of shares of the Preferred Stock underlying the Depositary Shares evidenced by such Receipt.

14. Changes Affecting Deposited Securities. Upon any change in par or stated value, split-up, combination or any other reclassification of the Preferred Stock or upon any recapitalization, reorganization, merger, amalgamation or consolidation of the Company or the sale of all or substantially all the Company's assets, the Depositary may, in its discretion with the approval of the Company, and (in either case) in such manner as the Depositary may deem equitable, (i) make such adjustments in (a) the fraction of an interest in one share of Preferred Stock underlying one Depositary Share and (b) the ratio of the redemption price per Depositary Share to the redemption price of a share of Preferred Stock, in each case as may be necessary fully to reflect the effects of such change in par or stated value, split-up, combination or any other reclassification of the Preferred Stock or upon any recapitalization, reorganization, merger, amalgamation or consolidation of the Company and (ii) treat any securities which shall be received by the Depositary in exchange for or upon conversion of or in respect of such Preferred Stock as new deposited securities so received in exchange for or upon conversion or in respect of the Preferred Stock. In any such case the Depositary may, in its discretion, with the approval of the Company, execute and deliver additional Depositary Receipts or may call for the surrender of outstanding Depositary Receipts to be exchanged for new Depositary Receipts specifically describing

such new deposited securities.

15. Liability and Obligations of the Depositary, the Depositary's Agents or the Company. Neither the Depositary nor any Depositary's Agent nor any Transfer Agent or Registrar nor the Company assumes any obligation or shall be subject to any liability under the Deposit Agreement to any holder of any Depositary Receipt (or proposed transferees of this Depositary Receipt), other than that each of them agree to use its best judgment and good faith in the performance of such duties as are expressly set forth in the Depositary Agreement. Neither the Depositary nor any Depositary's Agent nor any Transfer Agent or Registrar nor the Company shall incur any liability to any holder of this Depositary Receipt (or proposed transferees of this Depositary Receipt) if, by reason of any provision of any present or future law or any regulation thereunder of the United States of America or any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar, by reason of any provision, present or future, of the Company's Restated Articles of Organization, as amended, or by reason of any act of God or war or other circumstance beyond their control, the Depositary, the Depositary's Agent, the Registrar or the Company shall be prevented or forbidden from doing or performing any act or thing which the terms of the Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any Registrar or the Company incur any liability to any holder of a Depositary Receipt by reason of nonperformance or delay, caused as aforesaid, in its performance or any act or thing which by the terms of the Deposit Agreement is provided shall be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in the Deposit Agreement, other than for its gross negligence, bad faith or intentional misconduct. Neither the Depositary nor any Depositary's Agent nor any Registrar for the Company shall be under any obligation or appear in, prosecute or defend any action, suit or other proceeding in respect of the Preferred Stock, the Depositary Shares

7

33

or the Depositary Receipts that in its opinion may involve it in expense or liability, unless indemnity satisfactory to it against all expenses and liability be furnished. The Deposit Agreement contains various other exculpatory, indemnification and related provisions, to which reference is hereby made.

16. Resignation and Removal of Depositary. The Depositary may at any time (i) resign by written notice of its election to do so delivered to the Company, such resignation to take effect upon the appointment of a successor Depositary and its acceptance of such appointment, or (ii) be removed by the Company effective upon the appointment of a successor Depositary and its acceptance of such appointment.

17. Termination of Deposit Agreement. The Deposit Agreement may be terminated only after (i) all outstanding Depositary Shares have been redeemed or surrendered; or (ii) there shall have been a final distribution with respect to the Preferred Stock in connection with any liquidation, dissolution or winding up of the Company and such distribution shall have been distributed to the holders of Depositary Receipts, or otherwise provided for. Upon the termination of the Deposit Agreement, the Company shall be discharged from all obligations thereunder except for its obligations to the Depositary with respect to indemnifications, charges and expenses.

18. Governing Law. THIS RECEIPT AND ALL RIGHTS HEREUNDER AND THEREUNDER AND PROVISIONS HEREOF SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS.

8

#### ABBREVIATIONS

The following abbreviations when used in the instruction on the face of this certificate shall be construed as though they were written out in full according to applicable laws or regulations.

TENCOM - as tenants in common

TENANT - as tenants by the entireties

JT TEN - as joint tenants with right of survivorship and not as tenants in

common

UNIF GIFT MIN ACT - \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust.) (Minor)  
Under Uniform Gift to Minors Act \_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.

\_\_\_\_\_

For value received \_\_\_\_\_ hereby sell, assign and  
transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF ASSIGNEE

\_\_\_\_\_  
\_\_\_\_\_  
(Please print or typewrite name and address including zip code of assignee)

9

34

the within Receipt and all rights and interest represented by the  
Depository Shares evidenced thereby, and do hereby irrevocably  
constitute and appoint Attorney to transfer the same on the books of  
the within-named Depository, with full power of substitution in the  
premises.

Dated \_\_\_\_\_

NOTICE: THE SIGNATURE TO THIS  
ASSIGNMENT MUST CORRESPOND  
WITH THE NAME AS WRITTEN UPON  
THE FACE OF THE RECEIPT IN  
EVERY PARTICULAR, WITHOUT  
ALTERATION OR ENLARGEMENT OR  
ANY CHANGE WHATEVER.

45130.c2  
1/18/94 3:40 pm

10

DIGITAL EQUIPMENT CORPORATION  
STANDARD DEBT SECURITIES WARRANT  
AGREEMENT PROVISIONS

\_\_\_\_\_, 1994

<TABLE>

TABLE OF CONTENTS

<CAPTION>

<S>

<C>

Page

----

<C>

ARTICLE 1

ISSUANCE, EXECUTION AND DELIVERY OF WARRANT CERTIFICATES

SECTION 1.1	Issuance of Warrant Certificates . . . . .	1
SECTION 1.2	Execution and Delivery of Warrant Certificates . . . . .	1
SECTION 1.3	Countersignature of Warrant Certificates . . . . .	2
SECTION 1.4	Temporary Warrant Certificates . . . . .	2

ARTICLE 2

WARRANT PRICE, DURATION AND  
EXERCISE OF WARRANT CERTIFICATES

SECTION 2.1	Warrant Price . . . . .	3
SECTION 2.2	Duration of Warrant Certificates . . . . .	3
SECTION 2.3	Exercise of Warrant Certificates . . . . .	3

ARTICLE 3

OTHER PROVISIONS RELATING TO RIGHTS OF HOLDERS  
OF WARRANT CERTIFICATES

SECTION 3.1	No Rights as Securityholders Conferred by Warrant Certificates . . . . .	4
SECTION 3.2	Lost, Stolen, Mutilated or Destroyed Warrant Certificates . . . . .	5
SECTION 3.3	Holder of Warrant Certificate May Enforce Rights . . . . .	5
SECTION 3.4	Call of Warrant by the Company . . . . .	5
SECTION 3.5	Optional Reduction of Warrant Price . . . . .	5
SECTION 3.6	Issuance of Debt Securities . . . . .	6

ARTICLE 4

EXCHANGE AND TRANSFER OF WARRANT CERTIFICATES

SECTION 4.1	Exchange and Transfer . . . . .	6
SECTION 4.2	Treatment of Holders of Warrant Certificates . . . . .	7
SECTION 4.3	Cancellation of Warrant Certificates . . . . .	7

ARTICLE 5

CONCERNING THE WARRANT AGENT

SECTION 5.1	Warrant Agent . . . . .	7
-------------	-------------------------	---

</TABLE>

(i)

<TABLE>

<S>

<C>

<C>

SECTION 5.2	Conditions of Warrant Agent's Obligations . . . . .	7
SECTION 5.3	Resignation and Appointment of Successor Warrant Agent . . . . .	10

ARTICLE 6

MISCELLANEOUS

SECTION 6.1	Consolidations and Mergers of the Company and Sales, Leases and Conveyances Permitted Subject to Certain Conditions . . . . .	10
SECTION 6.2	Rights and Duties of Successor Corporation . . . . .	11
SECTION 6.3	Merger, Consolidation or Change of Name of Warrant Agent . . . . .	11

SECTION 6.4	Supplements and Amendments . . . . .	11
SECTION 6.5	Notices and Demands to the Company and Warrant Agent . . . . .	12
SECTION 6.6	Notices to Company and Warrant Agent . . . . .	12
SECTION 6.7	Delivery of Prospectus . . . . .	12
SECTION 6.8	Obtaining of Governmental Approvals . . . . .	12
SECTION 6.9	Persons Having Rights Under Warrant Agreement . . . . .	13
SECTION 6.10	Headings . . . . .	13
SECTION 6.11	Counterparts . . . . .	13
SECTION 6.12	Inspection of Agreement . . . . .	13
SECTION 6.13	Governing Law . . . . .	13
SECTION 6.14	Board of Directors . . . . .	13

</TABLE>

(ii)

4

From time to time, Digital Equipment Corporation, a Massachusetts corporation (the "Company"), may enter into one or more warrant agreements that provide for the issuance and sale of warrants ("Warrants") to purchase debt securities of the Company ("Debt Securities"). The standard provisions set forth herein may be included or incorporated by reference in any such warrant agreement (a "Warrant Agreement"). The Warrant Agreement, including the provisions incorporated therein by reference, is herein referred to as this "Agreement." The person named as the "Warrant Agent" in the first paragraph of the Warrant Agreement is herein referred to as the "Warrant Agent." Unless otherwise defined in this Agreement or in the Warrant Agreement, as the case may be, terms defined in the Warrant Agreement are used herein as therein defined and terms defined herein are used in the Warrant Agreement as herein defined.

ARTICLE 1

ISSUANCE, EXECUTION AND DELIVERY OF WARRANT CERTIFICATES

SECTION 1.1 ISSUANCE OF WARRANT CERTIFICATES. Each Warrant Certificate shall evidence one or more Warrants. Each Warrant evidenced thereby shall represent the right, subject to the provisions contained herein and therein, to purchase a Debt Security in the principal amount set forth in the Warrant Agreement.

SECTION 1.2 EXECUTION AND DELIVERY OF WARRANT CERTIFICATES. Warrant Certificates shall be signed on behalf of the Company by its President, a Vice President or its Treasurer and attested by its Secretary or Assistant Secretary or Clerk or Assistant Clerk, under its corporate seal. Each such signature upon the Warrant Certificates may be in the form of a facsimile signature of the current or any future, President, Vice President, Treasurer, Secretary or Assistant Secretary or Clerk or Assistant Clerk and may be imprinted or otherwise reproduced on the Warrant Certificates and for that purpose the Company may adopt and use the facsimile signature of any person who shall have been President, Vice President, Treasurer, Secretary or Assistant Secretary or Clerk or Assistant Clerk, notwithstanding the fact that at the time the Warrant Certificates shall be countersigned and delivered or disposed of such person shall have ceased to hold such office. The seal of the Company may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Warrant Certificates.

If any officer of the Company who shall have signed any of the Warrant Certificates shall cease to be such officer before the Warrant Certificates so signed shall have been countersigned by the Warrant Agent or disposed of by the Company, such Warrant Certificates nevertheless may be countersigned and delivered or disposed of as though such person had not ceased to be such officer of the Company; and any Warrant Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Warrant Certificate, shall be a proper officer of the Company to sign such Warrant Certificate, although at the date of the execution of this Agreement any such person was not such officer.

5

SECTION 1.3 COUNTERSIGNATURE OF WARRANT CERTIFICATES. The Warrant Agent shall, upon receipt of Warrant Certificates, duly executed on behalf of the Company, countersign the Warrant Certificates evidencing Warrants to purchase the principal amount of the Debt Securities set forth in the Warrant Agreement and shall deliver such Warrant Certificates to the appropriate person or entity upon the order of the Company. After the original issuance of the Warrant Certificates, the Warrant Agent shall countersign a

Warrant Certificate only if the Warrant Certificate is issued in exchange or substitution for, or in connection with the registration of transfer of, one or more previously countersigned Warrant Certificates, as hereinafter provided.

The Warrant Agent's countersignature on all Warrants shall be in substantially the following form:

[NAME OF WARRANT AGENT],  
as Warrant Agent

By \_\_\_\_\_  
Authorized Signatory

The Company and the Warrant Agent may deem and treat the registered holder of a Warrant Certificate as the absolute owner thereof (notwithstanding any notation of ownership or other writing thereon made by anyone), for the purpose of any exercise thereof or any distribution to the holder thereof and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary.

SECTION 1.4 TEMPORARY WARRANT CERTIFICATES. Pending the preparation of definitive Warrant Certificates, the Company may execute, and upon the order of the Company, the Warrant Agent shall authenticate and deliver, temporary Warrant Certificates which are printed, lithographed, typewritten, mimeographed or otherwise produced substantially of the tenor of the definitive Warrant Certificates in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Warrant Certificates may determine, as evidenced by their execution of such Warrant Certificates.

If temporary Warrant Certificates are issued, the Company will cause definitive Warrant Certificates to be prepared without unreasonable delay. After the preparation of definitive Warrant Certificates, the temporary Warrant Certificates shall be exchangeable for definitive Warrant Certificates upon surrender of the temporary Warrant Certificates at the corporate trust office of the Warrant Agent, without charge to the holder. Upon surrender for cancellation of any one or more temporary Warrant Certificates, the Company shall execute and the Warrant Agent shall authenticate and deliver in exchange therefor definitive Warrant Certificates representing the same aggregate number of Warrants. Until so exchanged, the temporary Warrant Certificates shall in all respects be entitled to the same benefits under this Agreement as definitive Warrant Certificates.

2

6

## ARTICLE 2

### WARRANT PRICE, DURATION AND EXERCISE OF WARRANT CERTIFICATES

SECTION 2.1 WARRANT PRICE. The exercise price of each Warrant and any other form of consideration other than lawful money of the United States of America by which the exercise price may be paid shall be as set forth in the Warrant Agreement. The purchase price (including moneys and such other consideration) of the Debt Securities upon exercise of the Warrants is referred to in this Agreement as the "Warrant Price" and is payable in full at the time of exercise.

SECTION 2.2 DURATION OF WARRANT CERTIFICATES. The Warrants shall expire on (a) the close of business on [specify date], or (b) such later date as shall be determined in the sole discretion of the Company, in a written statement to the Warrant Agent and with notice to registered holders of Warrants in the manner provided for in Section 6.5 (such date of expiration being herein referred to as the "Expiration Date"). On and after the [specified date], each Warrant may be exercised on any business day on or prior to the close of business on the Expiration Date. After the close of business on the Expiration Date, the Warrants will become void and of no value.

### SECTION 2.3 EXERCISE OF WARRANT CERTIFICATES.

(a) Prior to the Expiration Date, a Warrant Certificate, if countersigned by the Warrant Agent, may be exercised by providing certain information set forth on the reverse side of the Warrant Certificate and, unless otherwise provided pursuant to Section 2.1, by paying in full (in cash or by certified or official bank check in New York Clearing House funds or by

bank wire transfer in immediately available funds), in United States dollars, the Warrant Price for the Debt Securities as to which the Warrant Certificate is exercised, to the Warrant Agent at its office at the address set forth in the Warrant Agreement. The payment must specify the name of the holder and the number of Warrants exercised by such holders. Warrants will be deemed to have been exercised upon receipt of the Warrant Price, subject to receipt within five business days thereafter of the Warrant Certificate at the corporate trust office of the Warrant Agent properly completed and duly executed, the signature of such holder to be guaranteed by a bank or trust company, by a broker or dealer which is a member of the NASD or by a member of a national securities exchange. The Warrant Agent shall account promptly to the Company with respect to Warrants exercised and concurrently pay or deliver to the Company all moneys and other consideration received by it on the purchase of the Debt Securities through the exercise of Warrants. The Warrant Agent shall advise the Company by telex or telecopy at the end of each day as to the Warrant Certificates that have been exercised and the amount of moneys deposited to its account or the type and amount of other consideration to be delivered to it.

3

7

(b) The Warrant Agent shall, from time to time, as promptly as practicable, advise the Company and the Trustee of (i) the number of Warrants exercised, (ii) the instructions of each holder of the Warrant Certificates evidencing such Warrants with respect to delivery of the Debt Securities to which such holder is entitled upon such exercise, (iii) delivery of Warrant Certificates evidencing the balance, if any, of the Warrants remaining after such exercise and (iv) such other information as the Company or the Trustee shall reasonably require.

(c) A Warrant Certificate may be exercised in part to purchase Debt Securities only in the denominations authorized pursuant to the indenture under which the Debt Securities are issued (the "Indenture").

(d) As soon as practicable after receipt of payment of the Warrant Price and the Warrant Certificate properly completed and duly executed at the office of the Warrant Agent, the Company shall issue, pursuant to the Indenture, to or upon the order of the holder of such Warrant Certificate, the Debt Securities in authorized denominations to which such holder is entitled, in fully registered form in such name or names as may be directed by such holder, and if such Warrant Certificate was not exercised in full, upon request of the holder of a new Warrant Certificate evidencing the number of Warrants remaining unexercised shall be issued if sufficient time remains prior to the Expiration Date. Such evidence of Debt Securities shall be deemed to have been issued and any person so designated to be named therein shall be deemed to have become the holder of record of such Debt Securities as of the date of the surrender of such Warrant Certificate duly executed and payment of the Warrant Price.

(e) The Company will pay all documentary stamp taxes attributable to the initial issuance of Warrants and of Debt Securities upon the exercise of Warrants; provided, however, that the Company shall not be required to pay any tax or taxes which may be payable in respect to any transfer involved in the issue of any Warrant Certificates or any certificates for Debt Securities in a name other than the registered holder of a Warrant Certificate surrendered upon the exercise of a Warrant, and the Company shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

### ARTICLE 3

#### OTHER PROVISIONS RELATING TO RIGHTS OF HOLDERS OF WARRANT CERTIFICATES

SECTION 3.1 NO RIGHTS AS SECURITYHOLDERS CONFERRED BY WARRANT CERTIFICATES. No Warrant Certificate shall entitle the holder thereof to any of the rights of a holder of Debt Securities, including the right to receive the payment of principal of, or interest on, the Debt Securities or to enforce any of the covenants of the Debt Securities or the Indenture except as otherwise provided in the Indenture.



SECTION 3.2 LOST, STOLEN, MUTILATED OR DESTROYED WARRANT CERTIFICATES. Upon receipt by the Company and the Warrant Agent of evidence reasonably satisfactory to them of the ownership and the loss, theft, destruction or mutilation of the Warrant Certificate, and of indemnity reasonably satisfactory to them, and, in the case of mutilation, upon surrender thereof to the Warrant Agent for cancellation, then, in the absence of notice to the Company or the Warrant Agent that such Warrant Certificate has been acquired by a bona fide purchaser, the Company shall execute, and an authorized officer of the Warrant Agent shall manually countersign and deliver, in exchange for or in lieu of the lost, stolen, destroyed or mutilated Warrant Certificate, a new Warrant Certificate of the same tenor and for a like number of Warrants. Upon the issuance of any new Warrant Certificate under this Section, 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 expense (including the fees and expenses of the Warrant Agent) in connection therewith. Every substitute Warrant Certificate executed and delivered pursuant to this Section in lieu of any lost, stolen or destroyed Warrant Certificate shall constitute an additional contractual obligation of the Company, whether or not the lost, stolen or destroyed Warrant Certificate shall be at any time enforceable by anyone, and shall be entitled to the benefits of this Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. The provisions of this Section are exclusive and shall preclude (to the extent lawful) any and all other rights or remedies with respect to the replacement of mutilated, lost, stolen or destroyed Warrant Certificates.

SECTION 3.3 HOLDER OF WARRANT CERTIFICATE MAY ENFORCE RIGHTS. Notwithstanding any of the provisions of this Agreement, any holder of any Warrant Certificate, without the consent of the Warrant Agent, the Trustee, the holder of any Debt Security or the holder of any other Warrant Certificate, may, in his own behalf and for his own benefit, enforce, and may institute and maintain any audit, action or proceeding against the Company to enforce or otherwise in respect of, his right to exercise his Warrant Certificate in the manner provided in his Warrant Certificate and in his Agreement.

SECTION 3.4 CALL OF WARRANT BY THE COMPANY. If so provided in the Warrant Agreement, the Company shall have the right to call and repurchase any or all Warrants at the price (the "Call Price") and on or after the date (the "Call Date") and upon the terms (the "Call Terms") as shall be established from time to time in or pursuant to resolutions of the Board of Directors of the Company or in the Warrant Agreement before the issuance of such Warrants. Notice of such Call Price, Call Date and Call Terms shall be given to registered holders of Warrants in writing by the Company or the Warrant Agent.

SECTION 3.5 OPTIONAL REDUCTION OF WARRANT PRICE. Subject to the limits, if any, established from time to time by the Board of Directors of the Company or in the Warrant Agreement, the Company shall have the right, at any time or from time to time, voluntarily to reduce the then current Warrant Price to such amount (the "Reduced Warrant Price") and

for such period or periods of time, which may be through the close of business on the Expiration Date (the "Reduced Warrant Price Period"), as may be deemed appropriate by the Board of Directors of the Company. Notice of any such Reduced Warrant Price and Reduced Warrant Price Period shall be given to registered holders of Warrants in writing by the Company or the Warrant Agent. Unless further action is taken by the Company pursuant to this Section 3.5, after the termination of the Reduced Warrant Price Period, the Warrant Price shall be such Warrant Price that would have been in effect had there been no reduction in the Warrant Price pursuant to the provisions of this Section 3.5.

SECTION 3.6 ISSUANCE OF DEBT SECURITIES. The Company covenants that all Debt Securities issued upon exercise of the Warrants have been duly authorized and will, upon issuance in accordance with the terms of this Agreement and the Indenture, be duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms subject, as to enforcement, to bankruptcy, insolvency, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

## EXCHANGE AND TRANSFER OF WARRANT CERTIFICATES

SECTION 4.1 EXCHANGE AND TRANSFER. Upon surrender at the corporate trust office of the Warrant Agent, Warrant Certificates evidencing Warrants may be exchanged for Warrant Certificates in other denominations evidencing such Warrants and the transfer of Warrants may be registered in whole or in part; provided that such other Warrant Certificates shall evidence the same aggregate number of Warrants as the Warrant Certificates surrendered for exchange or registration. The Warrant Agent shall keep, at its office, books in which it shall register Warrant Certificates and exchanges and transfers of outstanding Warrant Certificates, upon surrender of the Warrant Certificates to the Warrant Agent at its corporate trust office for exchange or registration of transfer, properly endorsed or accompanied by appropriate instruments of registration of transfer and written instructions for transfer duly signed by the registered holder or holders thereof or by the duly appointed legal representative thereof or by a duly authorized attorney, such signature to be guaranteed by a bank or trust company, by a broker or dealer which is a member of the NASD or by a member of a national securities exchange, all in form satisfactory to the Company and the Warrant Agent. No service charge shall be made for any exchange or registration of transfer of Warrant Certificates, but the Company may require payment of a sum sufficient to cover any stamp or other tax or other governmental charge that may be imposed in connection with any such exchange or registration of transfer. Whenever any Warrant Certificates are surrendered for exchange or registration of transfer, an authorized officer of the Warrant Agent shall manually countersign and deliver to the person or person entitled thereto a Warrant Certificate or Warrant Certificates duly authorized and executed by the Company, as so requested. The Warrant Agent shall not be required to effect any exchange or registration of transfer that will result in the issuance of a Warrant Certificates evidencing a fraction of a

6

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Warrant or a number of full Warrants and a fraction of a Warrant. All Warrant Certificates issued upon any exchange or registration of transfer of Warrant Certificates shall be the valid obligations of the Company, evidencing the same obligations and entitled to the same benefits under this Agreement as the Warrant Certificates surrendered for such exchange or registration of transfer.

SECTION 4.2 TREATMENT OF HOLDERS OF WARRANT CERTIFICATES. Every holder of a Warrant Certificate, by accepting the same, consents and agrees with the Company, the Warrant Agent and with every subsequent holder of such Warrant Certificate that, until the transfer of the Warrant Certificate is registered on the books of the Warrant Agent, the Company and the Warrant Agent may treat the registered holder as the absolute owner thereof for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced thereby, any notice to the contrary notwithstanding.

SECTION 4.3 CANCELLATION OF WARRANT CERTIFICATES. Any Warrant Certificate surrendered for exercise, registration of transfer or exchange shall, if surrendered to the Company, be delivered to the Warrant Agent, and all Warrant Certificates surrendered or so delivered to the Warrant Agent shall be promptly canceled by the Warrant Agent and shall not be reissued and, except as expressly permitted by this Agreement, no Warrant Certificate shall be issued hereunder in lieu thereof. The Warrant Agent shall deliver to the Company from time to time, or otherwise dispose of, canceled Warrant Certificates in a manner satisfactory to the Company.

## ARTICLE 5

### CONCERNING THE WARRANT AGENT

SECTION 5.1 WARRANT AGENT. The Company hereby appoints the Warrant Agent as the Warrant Agent of the Company in respect of the Warrant Certificates upon the terms and subject to the conditions herein set forth, and the Warrant Agent hereby accepts such appointment. The Warrant Agent shall have the powers and authority granted to and conferred upon it in the Warrant Certificate and by this Agreement, and such further powers and authority to act on behalf of the Company as the Company may hereafter grant to or confer upon it. All of the terms and provisions with respect to such powers and authority contained in the Warrant Certificates are subject to and governed by the terms and provisions hereof.

SECTION 5.2 CONDITIONS OF WARRANT AGENT'S OBLIGATIONS. The Warrant Agent accepts its obligations herein set forth upon the terms and

conditions hereof, including the following (to all of which the Company agrees and to all of which the rights hereunder of the holders from time to time of the Warrant Certificates shall be subject):

(a) PERFORMANCE BY THE COMPANY. The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and

7

11

delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Agreement.

(b) COMPENSATION AND INDEMNIFICATION. The Company agrees to pay to the Warrant Agent reasonable compensation for all services rendered by the Warrant Agent under this Agreement, to reimburse the Warrant Agent upon demand for all expenses, taxes and governmental charges and other charges of any kind and nature incurred by the Warrant Agent in the performance of its duties under this Agreement and to indemnify the Warrant Agent and save it harmless against any and all losses, liabilities and expenses, including judgments, costs and reasonable counsel fees, for anything done or omitted by the Warrant Agent arising out of or in connection with this Agreement except as a result of its negligence, bad faith or willful misconduct.

(c) AGENT FOR THE COMPANY. The Warrant Agent shall act hereunder solely as agent for the Company, and its duties shall be determined solely by the provisions hereof, and the Warrant Agent does not assume any obligation or relationship of agency or trust for or with any of the owners or holders of the Warrant Certificates. The Warrant Agent shall not be liable for anything which it may do or refrain from doing in connection with this Agreement except for its own negligence, bad faith or willful misconduct.

(d) COUNSEL. The Warrant Agent may consult at any time with counsel satisfactory to it (who may be counsel for the Company) and the Warrant Agent shall incur no liability or responsibility to the Company or any holder of any Warrant Certificate in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or the advice of such counsel.

(e) DOCUMENT. The Warrant Agent shall incur no liability or responsibility to the Company or to any holder of any Warrant Certificate for any action taken in reliance on any notice, resolution, waiver, consent, order, certificate or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.

(f) CERTAIN TRANSACTIONS. The Warrant Agent, and any stockholder, director, officer or employee thereof, may act as Trustee under the Indenture and may buy, sell or deal in any of the Warrants or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though they were not the Warrant Agent under this Agreement, or a stockholder, director, officer or employee of the Warrant Agent, as the case may be, and, to the extent permitted by applicable law, they may act on, or as depositary, trustee or agent for, any committee or body of holders of the Debt Securities or other obligations of the Company as freely as if it were not the Warrant Agent. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

8

12

(g) NO LIABILITY FOR INTEREST. Except as set forth in the Warrant Agreement, the Warrant Agent shall not be under any liability for interest on any moneys or other consideration at any time received by it pursuant to any of the provisions of this Agreement or of the Warrant Certificates.

(h) NO LIABILITY FOR INVALIDITY AND NO RESPONSIBILITY FOR REPRESENTATIONS. The Warrant Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Warrant Agent) or in respect of the validity or execution of any Warrant Certificate (except its countersignature thereof), nor shall the Warrant Agent by any act hereunder be deemed to make

any representation or warranty as to the authorization or reservation of the shares to be issued pursuant to this Agreement or any Warrant Certificate or as to whether the shares will when issued be validly issued, fully paid and nonassessable or as to the Exercise Price or the number of shares issuable upon exercise of any Warrant.

(i) NO LIABILITY FOR ACCEPTANCE OF INSTRUCTIONS. The Warrant Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from the President, any Vice President, the Treasurer, the Secretary or any Assistant Secretary of the Company, and to apply to such officers for advice or instructions in connection with its duties, and shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer or in good faith reliance upon any statement signed by any one of such officers of the Company with respect to any fact or matter (unless other evidence in respect thereof is herein specifically prescribed) which may be deemed to be conclusively proved and established by such signed statement.

(j) NO IMPLIED OBLIGATIONS. The Warrant Agent shall be obligated to perform such duties as are herein and in the Warrant Certificates specifically set forth, but no implied duties or obligations shall be read into this Agreement or the Warrant Certificates against the Warrant Agent. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or one or more registered holders of Warrant Certificates shall furnish the Warrant Agent with reasonable security and indemnity for any costs or expenses which may be incurred. All rights of action under this Agreement or under any of the Warrants may be enforced by the Warrant Agent without the possession of any of the Warrant Certificates or the production thereof at any trial or other proceeding relative thereto, and any such action, suit or proceeding instituted by the Warrant Agent shall be brought in its name as Warrant Agent, and any recovery or judgment shall be for the ratable benefit of the registered holders of the Warrants, as their respective rights or interests may appear. The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of any of the Warrant Certificates authenticated by the Warrant Agent and delivered by it to the Company pursuant to this Agreement or for the application by the Company of the proceeds of the Warrant Certificates. The Warrant Agent shall have no duty or responsibility in case of any default by the Company in the performance of its covenants or agreements contained in the Warrant Certificates or in the case of the receipt of any written demand from a holder of a

Warrant Certificate with respect to such default, including any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or, except as provided in Section 6.2 hereof, to make any demand upon the Company.

SECTION 5.3 RESIGNATION AND APPOINTMENT OF SUCCESSOR WARRANT AGENT. If the Warrant Agent shall resign (such resignation to become effective not earlier than 60 days after the giving of written notice thereof to the Company and the registered holders of Warrant Certificates) or shall become incapable of acting as Warrant Agent or if the Board of Directors of the Company shall by resolution remove the Warrant Agent (such removal to become effective not earlier than 30 days after the filing of a certified copy of such resolution with the Warrant Agent and the giving of written notice of such removal to the registered holders of Warrant Certificates), the Company shall appoint a successor to the Warrant Agent. If the Company shall fail to make such appointment within a period of 30 days after such removal or after it has been so notified in writing of such resignation or incapacity by the Warrant Agent or by the registered holder of a Warrant Certificate (in the case of incapacity), then the registered holder of any Warrant Certificate may apply to any court of competent jurisdiction for the appointment of a successor to the Warrant Agent. Pending appointment of a successor to the Warrant Agent, either by the Company or by such a court, the duties of the Warrant Agent shall be carried out by the Company. Any successor Warrant Agent, whether appointed by the Company or by such a court, shall be in good standing, incorporated under the laws of any state or of the United States of America. As soon as practicable after appointment of the successor Warrant Agent, the Company shall cause written notice of the change in the Warrant Agent to be given to each of the registered holders of the Warrant Certificates at such holder's address appearing on the Warrant Register. After appointment, the successor Warrant Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Warrant Agent without further act or deed. The former Warrant Agent shall deliver and transfer to the successor

Warrant Agent any property at the time held by it hereunder and execute and deliver, at the expense of the Company, any further assurance, conveyance, act or deed necessary for the purpose. Failure to give any notice provided in this Section 6.5 or any defect therein, shall not affect the legality or validity of the removal of the Warrant Agent or the appointment of a successor Warrant Agent, as the case may be.

## ARTICLE 6

### MISCELLANEOUS

SECTION 6.1 CONSOLIDATIONS AND MERGERS OF THE COMPANY AND SALES, LEASES AND CONVEYANCES PERMITTED SUBJECT TO CERTAIN CONDITIONS. To the extent permitted in the Indenture, the Company may consolidate with, or sell or convey all or substantially all of its assets to, or merge with or into any other corporation.

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14

SECTION 6.2 RIGHTS AND DUTIES OF SUCCESSOR CORPORATION. In case of any such consolidation, merger, sale, lease or conveyance and upon any such assumption by the successor corporation, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named herein, and the predecessor corporation, except in the event of a lease, shall be relieved of any further obligation under this Agreement and the Warrants. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Debt Securities issuable pursuant to the terms hereof. All the Debt Securities so issued shall in all respects have the same legal rank and benefit under the Indenture as the Debt Securities theretofore or thereafter issued in accordance with the terms of this Agreement and the Indenture.

In case of any such consolidation, merger, sale, lease or conveyance, such changes in phraseology and form (but not in substance) may be made in the Warrant Debt Securities thereafter to be issued as may be appropriate.

SECTION 6.3 MERGER, CONSOLIDATION OR CHANGE OF NAME OF WARRANT AGENT. Any corporation into which the Warrant Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any corporation succeeding to the business of the Warrant Agent, shall be the successor to the Warrant Agent hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such corporation would be eligible for appointment as a successor Warrant Agent under the provisions of Section 5.3. IF, at the time such successor to the Warrant Agent shall succeed under this Agreement, any of the Warrant Certificates shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent; and if at that time any of the Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Agreement.

If at any time the name of the Warrant Agent shall be changed and at such time any of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent whose name has changed may adopt the countersignature under its prior name; and if at that time any of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Agreement.

SECTION 6.4 SUPPLEMENTS AND AMENDMENTS. The Company and the Warrant Agent may from time to time supplement or amend this Agreement without the approval of any holders of Warrant Certificates, to cure any ambiguity, manifest error or other mistake in this Agreement, or to correct or supplement any provision contained herein that may be defective or inconsistent with any other provision herein, or to make any other provisions in

11

regard to matters or questions arising hereunder that the Company and the Warrant Agent may deem necessary or desirable and that shall not adversely affect, alter or change the interests of the holders of the Warrant Certificates.

SECTION 6.5 NOTICES AND DEMANDS TO THE COMPANY AND WARRANT AGENT. If the Warrant Agent shall receive any notice or demand addressed to the Company by the holder of a Warrant Certificate pursuant to the provisions of the Warrant Certificates, the Warrant Agent shall promptly forward such notice or demand to the Company.

SECTION 6.6 NOTICES TO COMPANY AND WARRANT AGENT. Any notice or demand authorized by this Agreement to be given or made by the Warrant Agent or by any registered holder of any Warrant Certificate to or on the Company shall be sufficiently given or made if sent by mail, first class or registered, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

Digital Equipment Corporation  
111 Powdermill Road  
Maynard, MA 01754  
Attention: Ilene B. Jacobs, Vice President and Treasurer (MS02-2/F23)  
with a copy to Gail S. Mann, Esq., Secretary and Clerk (MS02-3/F13)

If the Company shall fail to maintain such office or agency or shall fail to give such notice of any change in the location thereof, presentation may be made and notices and demands may be served at the principal office of the Warrant Agent.

Any notice pursuant to this Agreement to be given by the Company or by any registered holder of any Warrant Certificate to the Warrant Agent shall be sufficiently given if sent by mail, first class or registered, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company) to the Warrant Agent at the address set forth in the Warrant Agreement.

SECTION 6.7 DELIVERY OF PROSPECTUS. If the Company is required under applicable federal or state securities laws to deliver a prospectus upon exercise of Warrants, the Company will furnish to the Warrant Agent sufficient copies of a prospectus, and the Warrant Agent agrees that upon the exercise of any Warrant Certificate by the holder thereof, the Warrant Agent will deliver to such holder, prior to or concurrently with the delivery of the Debt Securities issued upon such exercise, a copy of the prospectus.

SECTION 6.8 OBTAINING OF GOVERNMENTAL APPROVALS. The Company will from time to time take all action that may be necessary to obtain and keep effective any and all permits, consents and approvals of governmental agencies and authorities and securities acts filings under federal and state laws, which may be or become requisite in connection with the issuance, sale, transfer and delivery of the Warrant Certificates, the exercise of the Warrants, and the issuance, sale, transfer and delivery of the Debt Securities issued upon exercise of the Warrants or upon the expiration of the period during which the Warrants are exercisable.

12

16

SECTION 6.9 PERSONS HAVING RIGHTS UNDER WARRANT AGREEMENT. Nothing in this Agreement is intended, or shall be construed, to confer upon, or give to, any person or corporation other than the Company, the Warrant Agent and the holders of the Warrant

Certificate any right, remedy or claim under or by reason of this Agreement or of any covenant, condition, stipulation, promise or agreement hereof. All covenants, conditions, stipulations, promises and agreements contained in this Agreement shall be for the sole and exclusive benefit of the Company, the Warrant Agent and their successor and of the holders of the Warrant Certificates.

SECTION 6.10 HEADINGS. The descriptive headings of the several Articles and Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

SECTION 6.11 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such

counterparts shall together constitute but one and the same instrument.

SECTION 6.12 INSPECTION OF AGREEMENT. A copy of this Agreement shall be available at all reasonable times at the principal corporate trust office of the Warrant Agent for inspection by the holder of any Warrant Certificate. The Warrant Agent may require such holder to submit his Warrant Certificate for inspection by it.

SECTION 6.13 GOVERNING LAW. This Agreement and each Warrant Certificate issued hereunder shall be deemed to be a contract made under the laws of the Commonwealth of Massachusetts and for all purposes shall be construed in accordance with the laws of such State.

SECTION 6.14 BOARD OF DIRECTORS. All references to any actions to be taken by the Company's Board of Directors shall be deemed to include actions taken by either the Company's Board of Directors or an authorized committee thereof.



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DIGITAL EQUIPMENT CORPORATION  
STANDARD [COMMON STOCK/EXCHANGE SECURITIES] WARRANT  
AGREEMENT PROVISIONS

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<TABLE>

TABLE OF CONTENTS

<CAPTION>

	Page
	----
<S>	<C>
SECTION 1. Number of Warrants Unlimited; Issuable from Time to Time . . . . .	1
SECTION 2. Form of Warrant Certificates . . . . .	2
SECTION 3. Temporary Warrant Certificates . . . . .	2
SECTION 4. Execution of Warrant Certificates . . . . .	2
SECTION 5. Registration and Countersignature . . . . .	3
SECTION 6. Exchange and Transfer . . . . .	3
SECTION 7. Duration and Exercise of Warrants . . . . .	4
SECTION 8. Call of Warrants by the Company . . . . .	5

SECTION	9. Optional Reduction of Exercise Price . . . . .	5
SECTION	10. Cancellation of Warrant Certificates . . . . .	6
SECTION	11. Treatment of Holders of Warrant Certificates . . . . .	6
SECTION	12. Payment of Taxes . . . . .	6
SECTION	13. Mutilated or Missing Warrant Certificates . . . . .	6
[SECTION	14. Reservation of Shares . . . . .	7
SECTION	15. Obtaining of Governmental Approvals and Stock Exchange Listings . . . . .	7
SECTION	16. Adjustment of Exercise Price and Number of Shares of Common Stock Purchasable or Number of Warrants for Common Stock . . . . .	8
SECTION	17. Fractional Warrants and Fractional Shares . . . . .	11
SECTION	18. Notices to Warrantholders . . . . .	11
SECTION	19. Merger, Consolidation or Change of Name of Warrant Agent . . . . .	13

(i)

3

<TABLE>		
<S>	<C>	<C>
SECTION	20. Warrant Agent . . . . .	13
SECTION	21. Conditions of Warrant Agent's Obligations . . . . .	13
SECTION	22. Change of Warrant Agent . . . . .	16
SECTION	23. Warrantholder Not Deemed a Stockholder . . . . .	16
SECTION	24. Delivery of Prospectus . . . . .	16
SECTION	25. Notices and Demands to the Company and Warrant Agent . . . . .	17
SECTION	26. Persons Having Rights Under Warrant Agreement . . . . .	17
SECTION	27. Inspection of Agreement . . . . .	17
SECTION	28. Notices to Company and Warrant Agent . . . . .	17
SECTION	29. Supplements and Amendments . . . . .	18
SECTION	30. Successors . . . . .	18
SECTION	31. Termination . . . . .	18
SECTION	32. Governing Law . . . . .	18
SECTION	33. Benefits of this Agreement . . . . .	18
SECTION	34. Counterparts . . . . .	18

SECTION 35. Headings . . . . .	18
SECTION 36. Board of Directors . . . . .	18

</TABLE>

(ii)

4

From time to time, Digital Equipment Corporation, a Massachusetts corporation ("the Company"), may enter into one or more warrant agreements that provide for the issuance and sale of warrants ("Warrants") to purchase shares of [the Company's common stock, \$1.00 par value ("Common Stock")] [securities issued by another corporation or entity and held by the Company] ("Exchange Securities") (such shares of [Common Stock] [Exchange Securities] are hereinafter referred to as the "Underlying Securities" and, where appropriate, such term shall also mean the other securities or property purchasable upon the exercise of the Warrants). The standard provisions set forth herein may be incorporated by reference in any such warrant agreement (a "Warrant Agreement"). The Warrant Agreement, including the provisions incorporated therein by reference, is herein referred to as this "Agreement." The person named as the "Warrant Agent" in the first paragraph of the Warrant Agreement is herein referred to as the "Warrant Agent." Unless otherwise defined in this Agreement or in the Warrant Agreement, as the case may be, terms defined in the Warrant Agreement are used herein as therein defined and terms defined herein are used in the Warrant Agreement as herein defined.

SECTION 1. NUMBER OF WARRANTS UNLIMITED; ISSUABLE FROM TIME TO TIME. The number of Warrants which may be issued and delivered under this Agreement is unlimited.

There shall be established in or pursuant to a resolution of the Board of Directors of the Company or established in one or more warrant agreements supplemental hereto, prior to the issuance of any Warrants:

- (1) the designation of such Warrants, the number of Warrants to be issued and the initial number and title of Underlying Securities [and, if Exchange Securities, the issuer thereof] for which each Warrant shall be exercisable;
- (2) if the Warrants are issued together as a unit with any other securities of the Company, the date after which the Warrants shall be freely tradable separately from such other securities (the "Distribution Date") and if the Company may at its option or under circumstances described therein provide for an earlier Distribution Date;
- (3) the Expiration Date pursuant to Section 6;
- (4) the Exercise Price and any form of consideration other than lawful money of the United States of America by which the Exercise Price may be paid pursuant to Section 6;
- (5) the Call Price, Call Date and Call Terms pursuant to Section

7, if any;

- (6) the limitations, if any, upon the Reduced Exercise Price and the Reduced Exercise Price Period pursuant to Section 8;
- (7) the circumstances, if any, under which the Exercise Price and the number of shares of Underlying Securities purchasable upon the exercise of each Warrant

5

and the number of Warrants outstanding are subject to adjustment and the manner of making any such adjustment; and

- (8) any additional limitations, modifications or provisions applicable to the Warrants to be issued.

SECTION 2. FORM OF WARRANT CERTIFICATES. The certificates evidencing the Warrants (the "Warrant Certificates") to be delivered pursuant to this Agreement shall be in registered form only. The Warrant Certificates shall be in substantially such form or forms as shall be established by the Company from time to time pursuant to one or more resolutions of the Board of Directors of the Company or in one or more warrant agreements supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Agreement, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with any law or with any rules made pursuant thereto or with any rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Warrants, as evidenced by their execution of the Warrants.

SECTION 3. TEMPORARY WARRANT CERTIFICATES. Pending the preparation of definitive Warrant Certificates, the Company may execute, and upon the order of the Company the Warrant Agent shall authenticate and deliver, temporary Warrant Certificates which are printed, lithographed, typewritten, mimeographed or otherwise produced substantially of the tenor of the definitive Warrant Certificates in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Warrant Certificates may determine, as evidenced by their execution of such Warrant Certificates.

If temporary Warrant Certificates are issued, the Company will cause definitive Warrant Certificates to be prepared without unreasonable delay. After the preparation of definitive Warrant Certificates, the temporary Warrant Certificates shall be exchangeable for definitive Warrant Certificates upon surrender of the temporary Warrant Certificates at the office of the Warrant Agent, without charge to the holder. Upon surrender for cancellation of any one or more temporary Warrant Certificates, the Company shall execute and the Warrant Agent shall authenticate and deliver in exchange therefor definitive Warrant Certificates representing the same aggregate number of Warrants. Until so exchanged, the temporary Warrant Certificates shall in all respects be entitled to the same benefits under this Agreement as definitive Warrant Certificates.

SECTION 4. EXECUTION OF WARRANT CERTIFICATES. Warrant Certificates shall be signed on behalf of the Company by its President, a Vice President or its Treasurer and attested by its Secretary or Assistant Secretary, under its corporate seal. Each such signature upon the Warrant Certificates may be in the form of a facsimile signature of the current or any future President, Vice President, Treasurer, Secretary or Assistant Secretary

and may be imprinted or otherwise reproduced on the Warrant Certificates and for that purpose the Company may adopt and use the facsimile signature of any person who shall have been President, Vice

President, Treasurer, Secretary or Assistant Secretary, notwithstanding the fact that at the time the Warrant Certificates shall be countersigned and delivered or disposed of such person shall have ceased to hold such office. The seal of the Company may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Warrant Certificates.

If any officer of the Company who shall have signed any of the Warrant Certificates shall cease to be such officer before the Warrant Certificates so signed shall have been countersigned by the Warrant Agent or disposed of by the Company, such Warrant Certificates nevertheless may be countersigned and delivered or disposed of as though such person had not ceased to be such officer of the Company; and any Warrant Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Warrant Certificate, shall be a proper officer of the Company to sign such Warrant Certificate, although at the date of the execution of this Agreement any such person was not such officer.

SECTION 5. REGISTRATION AND COUNTERSIGNATURE. Warrant Certificates shall be manually countersigned and dated the date of countersignature by the Warrant Agent and shall not be valid for any purpose unless so countersigned. The Warrants shall be numbered and shall be registered in a register (the "Warrant Register") to be maintained by the Warrant Agent.

The Warrant Agent's countersignature on all Warrants shall be in substantially the following form:

[NAME OF WARRANT AGENT],  
as Warrant Agent

By \_\_\_\_\_  
Authorized Signatory

The Company and the Warrant Agent may deem and treat the registered holder of a Warrant Certificate as the absolute owner thereof (notwithstanding any notation of ownership or other writing thereon made by anyone), for the purpose of any exercise thereof or any distribution to the holder thereof and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary.

SECTION 6. EXCHANGE AND TRANSFER. Upon surrender at the office of the Warrant Agent, Warrant Certificates evidencing Warrants may be exchanged for Warrant Certificates in other denominations evidencing such Warrants and the transfer of Warrants may be registered in whole or in part; provided that such other Warrant Certificates shall evidence the same aggregate number of

Warrants as the Warrant Certificates surrendered for exchange or registration of transfer. The Warrant Agent shall keep, at its office, books in which it shall register Warrant Certificates and exchanges and transfers of outstanding Warrant

Certificates, upon surrender of the Warrant Certificates to the Warrant Agent at its office for exchange or registration of transfer, properly endorsed or accompanied by appropriate instruments of registration of transfer and written instructions for transfer, all in form satisfactory to the Company and the Warrant Agent. No service charge shall be made for any exchange or registration of transfer of Warrant Certificates, but the Company may require payment of a sum sufficient to cover any stamp or other tax or other governmental charge that may be imposed in connection with any such exchange or registration of transfer. Whenever any Warrant Certificates are surrendered for exchange or registration of transfer, an authorized officer of the Warrant Agent shall mutually countersign and deliver to the person or person entitled thereto a Warrant Certificate or Warrant Certificates duly authorized and executed by the Company, as so requested. The Warrant Agent shall not be required to effect any exchange or registration of transfer that will result in the issuance of a Warrant Certificate evidencing a fraction of a Warrant or a number of full Warrants and a fraction of a Warrant. All Warrant Certificates issued upon any exchange or registration of transfer of Warrant Certificates shall be the valid obligations of the Company, evidencing the same obligations and entitled to the same benefits under this Agreement as the Warrant Certificates surrendered for such exchange or registration of transfer.

SECTION 7. DURATION AND EXERCISE OF WARRANTS. The Warrants shall expire on (a) the close of business on [the date set forth pursuant to Section 1], or (b) such later date as shall be determined in the sole discretion of the Company, in a written statement to the Warrant Agent and with notice to registered holders of Warrants in the manner provided for in Section 16 (such date of expiration being herein referred to as the "Expiration Date"). On and after the [specified date], each Warrant may be exercised on any business day on or prior to the close of business on the Expiration Date. After the close of business on the Expiration Date, the Warrants will become void and of no value.

Subject to the provisions of this Agreement, including Section 14, the holder of each Warrant shall have the right to purchase from the Company (and the Company shall issue and sell to such holder of a Warrant) [number of] Underlying Securities, as adjusted pursuant to Sections 14 and 16, at the price set forth pursuant to Section 1 (such price, as may be adjusted from time to time as provided in Section 14, being the "Exercise Price") upon depositing with the Warrant Agent at a Warrant Agent Office the Warrant Certificate evidencing such Warrant, with the form of election to purchase on the reverse thereof duly completed and signed by the registered holder or holders thereof or by the duly appointed legal representative thereof or by a duly authorized attorney, such signature to be guaranteed by a bank or trust company, by a broker or dealer which is a member of the NASD or by a member of a national securities exchange, and upon payment of the Exercise Price for the number of Underlying Securities in respect of which such Warrants are being exercised.

Unless otherwise provided pursuant to Section 1, payment of the aggregate Exercise Price shall be made in cash or by certified or official bank check in New York Clearing House funds or by bank wire transfer in immediately available funds, in United States dollars.

Subject to Section 10, upon such surrender of a Warrant Certificate and payment of the Exercise Price, [if the Underlying Securities are shares of Common Stock, the Warrant

4

8

Agent shall requisition from the Company's stock transfer agent (the "Transfer Agent") for issuance and delivery] [if the Underlying Securities are shares of Exchange Securities, the Warrant Agent shall deliver notice to the Company and the Company shall undertake to have the appropriate number of Exchange Securities issued and delivered, free and clear of any and all liens, claims, charges and encumbrances of the Company and of any person claiming through the Company,] to or upon the written order of the registered holder of such Warrant Certificate and in such name or names as such registered holder may designate, a certificate or certificates for the Underlying Securities issuable upon the exercise of the Warrant or Warrants evidenced by such Warrant Certificate. Such certificate or certificates shall be deemed to have been issued and any person so designated to be named therein shall be deemed to have become the holder of record of such shares of Underlying Securities as of the date of the surrender of such Warrant Certificate duly executed and payment of the Exercise Price. The Warrants evidenced by a Warrant Certificate shall be exercisable, at the election of the registered holder thereof, either as an entirety or from time to time for a portion of the number of Warrants specified in the Warrant Certificate. If less than all of the Warrants evidenced by a Warrant Certificate surrendered upon the exercise of the Warrants are exercised at any time prior to the date of expiration for the Warrants, a new Warrant Certificate or Certificates shall be issued for the remaining number of Warrants evidenced by the Warrant Certificate so surrendered, and the Warrant Agent is hereby authorized to countersign the required new Warrant Certificate or Certificates pursuant to the provisions of Section 5 and this Section 6.

The Warrant Agent shall account promptly to the Company with respect to Warrants exercised and concurrently pay or deliver to the Company all moneys and other consideration received by it on the purchase of the shares of the Underlying Securities through the exercise of Warrants.

SECTION 8. CALL OF WARRANTS BY THE COMPANY. If so provided in the Warrant Agreement, the Company shall have the right to call and repurchase any or all Warrants at the price (the "Call Price") and on or after the date (the "Call Date") and upon the terms (the "Call Terms") as shall be established from time to time in or pursuant to resolutions of the Board of Directors of the Company or in the Warrant Agreement before the issuance of such Warrants. Notice of such Call Price, Call Date and Call Terms shall be given to registered holders of Warrants in writing by the Company or the Warrant Agent.

SECTION 9. OPTIONAL REDUCTION OF EXERCISE PRICE. Subject to the limits, if any, established from time to time by the Board of Directors of the Company or in the Warrant Agreement, the Company shall have the right, at any



time or from time to time, voluntarily to reduce the then current Warrant Price to such amount (the "Reduced Warrant Price") and for such period or periods of time, which may be through the close of business on the Expiration Date (the "Reduced Warrant Price Period"), as may be deemed appropriate by the Board of Directors of the Company. Notice of any such Reduced Warrant Price and Reduced Warrant Price Period shall be given to registered holders of Warrants in writing by the Company or the Warrant Agent. Unless further action is taken by the Company pursuant to this Section 9, after the termination of the Reduced Warrant Price Period, the Warrant

5

9

Price shall be such Warrant Price that would have been in effect had there been no reduction in the Warrant Price pursuant to the provisions of this Section 9.

SECTION 10. CANCELLATION OF WARRANT CERTIFICATES. Any Warrant Certificate surrendered for exercise, registration of transfer or exchange shall, if surrendered to the Company, be delivered to the Warrant Agent, and all Warrant Certificates surrendered or so delivered to the Warrant Agent shall be promptly canceled by the Warrant Agent and shall not be reissued and, except as expressly permitted by this Agreement, no Warrant Certificate shall be issued hereunder in lieu thereof. The Warrant Agent shall deliver to the Company from time to time, or otherwise dispose of, canceled Warrant Certificates in a manner satisfactory to the Company.

SECTION 11. TREATMENT OF HOLDERS OF WARRANT CERTIFICATES. Every holder of a Warrant Certificate, by accepting the same, consents and agrees with the Company, the Warrant Agent and with every subsequent holder of such Warrant Certificate that, until the transfer of the Warrant Certificate is registered on the books of the Warrant Agent, the Company and the Warrant Agent may treat the registered holder as the absolute owner thereof for any purpose and as the person entitled to exercise the rights represented by the Warrants evidenced thereby, any notice to the contrary notwithstanding.

SECTION 12. PAYMENT OF TAXES. The Company will pay all documentary stamp taxes attributable to the initial issuance of Warrants and of the shares of the Underlying Securities upon the exercise of Warrants; provided, that the Company shall not be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issue of any Warrant Certificates or any certificates for the shares of the Underlying Securities in a name other than the registered holder of a Warrant Certificate surrendered upon the exercise of a Warrant, and the Company shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

SECTION 13. MUTILATED OR MISSING WARRANT CERTIFICATES. Upon receipt by the Company and the Warrant Agent of evidence reasonably satisfactory to them of the ownership and the loss, theft, destruction or mutilation of the Warrant Certificate, and of indemnity reasonably satisfactory to them, and, in the case of mutilation, upon surrender thereof to the Warrant Agent for cancellation, then, in the absence of notice to the Company or the Warrant

Agent that such Warrant Certificate has been acquired by a bona fide purchaser, the Company shall execute, and an authorized officer of the Warrant Agent shall manually countersign and deliver, in exchange for or in lieu of the lost, stolen, destroyed or mutilated Warrant Certificate, a new Warrant Certificate of the same tenor and for a like number of Warrants. Upon the issuance of any new Warrant Certificate under this Section, 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 expense (including the fees and expenses of the Warrant Agent) in connection therewith. Every substitute Warrant Certificate executed and delivered pursuant to this Section in lieu of any

lost, stolen or destroyed Warrant Certificate shall constitute an additional contractual obligation of the Company, whether or not the lost, stolen or destroyed Warrant Certificate shall be at any time enforceable by anyone, and shall be entitled to the benefits of this Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. The provisions of this Section are exclusive and shall preclude (to the extent lawful) any and all other rights or remedies with respect to the replacement of mutilated, lost, stolen or destroyed Warrant Certificates.

[SECTION 14. RESERVATION OF SHARES. For the purpose of enabling it to satisfy any obligation to issue Underlying Securities upon exercise of Warrants for shares of Common Stock, the Company will at all times through the close of business on the Expiration Date, reserve out of its aggregate authorized but unissued or treasury shares of Common Stock,] the number of Underlying Securities deliverable upon the exercise of all outstanding Warrants for shares of Common Stock, and the Transfer Agent for such Common Stock is hereby irrevocably authorized and directed at all times to reserve such number of authorized and unissued or treasury shares of Common Stock as shall be required for such purpose. The Company will keep a copy of this Agreement on file with such Transfer Agent and with every transfer agent for any shares of the Company's capital stock issuable upon the exercise of Warrants for shares of Common Stock pursuant to Section 14. The Warrant Agent is hereby irrevocably authorized to requisition from time to time from such Transfer Agent stock certificates issuable upon exercise of outstanding Warrants for shares of Common Stock, and the Company will supply such Transfer Agent with duly executed stock certificates for such purpose.

Before taking any action that would cause an adjustment pursuant to Section 14 reducing the Exercise Price below the then par value (if any) of the shares of Underlying Securities issuable upon exercise of the Warrants for shares of Common Stock, the Company will take any corporate action that may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Underlying Securities at the Exercise Price as so adjusted.

The Company covenants that all shares of Underlying Securities issued upon exercise of the Warrants for shares of Common Stock will, upon issuance in accordance with the terms of this Agreement, be duly and validly issued and fully paid and nonassessable and free from all taxes, liens, charges and

security interests created by or imposed upon the Company with respect to the issuance and/or holding thereof.]

SECTION 15. OBTAINING OF GOVERNMENTAL APPROVALS AND STOCK EXCHANGE LISTINGS. So long as any Warrants for shares of Common Stock remain outstanding, the Company will take all necessary steps (a) to obtain and keep effective any and all permits, consents and approvals of governmental agencies and authorities and to make filings under federal and state securities acts and laws, which may be or become requisite in connection with the issuance, sale, transfer and delivery of the Warrant Certificates, the exercise of the Warrants for shares of Common Stock and the issuance, sale, transfer and delivery of the shares of Underlying Securities issued upon exercise of Warrants for shares of Common Stock, and

7

11

(b) to have the shares of Common Stock, immediately upon their issuance upon exercise of Warrants, (i) listed on each national securities exchange on which the Common Stock is then listed or (ii) if the Common Stock is not then listed on any national securities exchange, listed for quotation on the NASD Automated Quotations System ("NASDAQ") National Market ("Nasdaq/NNM") or such other over-the-counter quotation system on which the Common Stock may then be listed.

SECTION 16. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF SHARES OF COMMON STOCK PURCHASABLE OR NUMBER OF WARRANTS FOR COMMON STOCK. Except as may be otherwise provided in accordance with Section 1, the Exercise Price, the number of shares of Underlying Securities purchasable upon the exercise of each Warrant for shares of Common Stock and the number of Warrants for shares of Common Stock outstanding are subject to adjustment from time to time upon the occurrence of the events enumerated in this Section 14.

(a) If the Company shall (i) pay a dividend on its capital stock (including Common Stock) in shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock, (iii) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock or (iv) issue any shares of its capital stock in a reclassification of the Common Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing corporation), the number of the shares of the Underlying Securities purchasable upon exercise of each Warrant immediately prior thereto shall be adjusted so that the holder of each Warrant shall be entitled to receive the kind and number of the shares of the Underlying Securities or other securities of the Company which such holder would have owned or have been entitled to receive after the happening of any of the events described above, had such Warrant been exercised immediately prior to the happening of such event or any record date with respect thereto. An adjustment made pursuant to this paragraph (a) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(b) In the event of any capital reorganization or any reclassification of the Common Stock (except as provided in paragraph (a) above or paragraph (h) below), any holder of Warrants upon exercise thereof shall be entitled to receive, in lieu of the Common Stock to which he would have become

entitled upon exercise immediately prior to such reorganization or reclassification, the shares (of any class or classes) or other securities or property of the Company that he would have been entitled to receive at the same aggregate Exercise Price upon such reorganization or reclassification if his Warrants had been exercised immediately prior thereto; and in any such case, appropriate provision (as determined in good faith by the Board of Directors of the Company, whose determination shall be conclusive and shall be evidenced by a resolution filed with the Warrant Agent) shall be made for the application of this Section 14 with respect to the rights and interests thereafter of the holders of Warrants (including the allocation of the adjusted Exercise Price between or among shares of classes of capital stock), to the end that this Section 14 (including the adjustments of the number of shares of Stock or other securities purchasable and the Exercise Price thereof) shall thereafter be reflected, as nearly as reasonably practicable, in all

8

12

subsequent exercises of the Warrants for any shares or securities or other property thereafter deliverable upon the exercise of the Warrants.

(c) Except for adjustments required by paragraph (h) hereof, no adjustment in the number of the shares of the Underlying Securities purchasable hereunder shall be required unless such adjustment would require an increase or decrease of at least one percent (1%) in the number of the shares of the Underlying Securities purchasable upon the exercise of each Warrant; provided, however, that any adjustments which by reason of this paragraph (c) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations shall be made to the nearest cent and to the nearest one-hundredth of a share of the Underlying Security, as the case may be.

(d) Whenever the number of the shares of the Underlying Securities purchasable upon the exercise of each Warrant is adjusted as herein provided (whether or not the Company then or thereafter elects to issue additional Warrants in substitution for an adjustment in the number of the shares of the Underlying Securities as provided in paragraph (f)), the Exercise Price payable upon exercise of each Warrant shall be adjusted by multiplying such Exercise Price immediately prior to such adjustment by a fraction, of which the numerator shall be the number of the shares of the Underlying Securities purchasable upon the exercise of each Warrant immediately prior to such adjustment, and of which the denominator shall be the number of the shares of the Underlying Securities so purchasable immediately thereafter.

(e) For the purpose of this Section 14, the term "shares of Common Stock" shall mean (i) the class of stock designated as the Common Stock of the Company at the date of this Agreement, or (ii) any other class of stock resulting from successive changes or reclassification of such shares consisting solely of changes in par value, or from par value to no par value, or from no par value to par value. If at any time, as a result of an adjustment made pursuant to paragraph (a) or (b) above, the holders of Warrants shall become entitled to purchase any shares of the Company other than shares of Common Stock, thereafter the number of such other shares so purchasable upon exercise of each Warrant and the Exercise Price of such shares shall be subject to

adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the shares of the Underlying Securities contained in paragraphs (a) through (d), inclusive, above, and the provisions of Sections 6, 10, 12, 13(a) and 16, with respect to the shares of the Underlying Securities, shall apply on like terms to any such other shares.

(f) The Company may elect, on or after the date of any adjustment required by paragraphs (a) and (b) of this Section 14, to adjust the number of Warrants in substitution for an adjustment in the number of the shares of the Underlying Securities purchasable upon the exercise of a Warrant. Each of the Warrants outstanding after such adjustment of the number of Warrants shall be exercisable for the same number of the shares of the Underlying Securities as immediately prior to such adjustment. Each Warrant held of record prior to such adjustment of the number of Warrants shall become that number of Warrants (calculated to the nearest hundredth) obtained by dividing the Exercise Price in effect prior to adjustment

9

13

of the Exercise Price by the Exercise Price in effect after adjustment of the Exercise Price. The Company shall notify the holders of Warrants in the same manner as provided in the first paragraph of Section 16, of its election to adjust the number of Warrants, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Exercise Price is adjusted or any date thereafter. Upon each adjustment of the number of Warrants pursuant to this paragraph (f) the Company shall, as promptly as practicable, cause to be distributed to holders of record of Warrants on such record date Warrant Certificates evidencing, subject to Section 15, the additional Warrants to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Warrant Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Warrant Certificates evidencing all the Warrants to be issued, executed and registered in the manner specified in Sections 4 and 5 (and which may bear, at the option of the Company, the adjusted Exercise Price) and shall be registered in the names of the holders of record of Warrant Certificates on the record date specified in the notice.

(g) Except as provided in paragraph (a) of this Section 14, no adjustment in respect of any dividends shall be made during the term of a Warrant or upon the exercise of a Warrant.

(h) In the case of any consolidation of the Company with or merger of the Company into another corporation or in case of any sale or conveyance to another corporation of the property of the Company as an entirety or substantially as an entirety, the Company or such successor or purchasing corporation, as the case may be, shall execute with the Warrant Agent an agreement that each holder of a Warrant shall have the right thereafter upon payment of the Exercise Price in effect immediately prior to such action to purchase upon exercise of each Warrant the kind and amount of shares and other securities and property which he would have owned or have been entitled to receive after the happening of such consolidation, merger, sale or conveyance

had such Warrant been exercised immediately prior to such action. The Company shall mail by first class mail, postage prepaid, to each holder of a Warrant, notice of the execution of any such agreement. Such agreement shall provide for adjustments, which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 14. The provisions of this paragraph (h) shall similarly apply to successive consolidations, mergers, sales or conveyances. The Warrant Agent shall be under no duty or responsibility to determine the correctness of any provisions contained in any such agreement relating either to the kind or amount of shares of stock or other securities or property receivable upon exercise of Warrants or with respect to the method employed and provided therein for any adjustments and shall be entitled to rely upon the provisions contained in any such agreement.

(i) Irrespective of any adjustments in the Exercise Price or the number or kind of shares purchasable upon the exercise of the Warrants, Warrants theretofore or thereafter issued may continue to express the same price and number and kind of shares as are stated in the Warrants initially issuable pursuant to this Agreement.

10

14

#### SECTION 17. FRACTIONAL WARRANTS AND FRACTIONAL SHARES.

(a) The Company shall not be required to issue fractions of Warrants on any distribution of Warrants to holders of Warrant Certificates pursuant to Section 14(f) or to distribute Warrant Certificates that evidence fractional Warrants. In lieu of such fractional Warrants there shall be paid to the registered holders of the Warrant Certificates with regard to which such fractional Warrants would otherwise be issuable, an amount in cash equal to the same fraction of the current market value of a full Warrant. For purposes of this Section 15(a), the current market value of a Warrant shall be the closing price of one Warrant (as determined pursuant to paragraph (c) below) for the trading day immediately prior to the date on which such fractional Warrant would have been otherwise issuable.

(b) Notwithstanding any adjustment pursuant to Section 14 in the number of the shares of the Underlying Securities purchasable upon the exercise of a Warrant, the Company shall not be required to issue fractional shares upon exercise of the Warrants or to distribute certificates which evidence fractional shares. In lieu of fractional shares, there shall be paid to the registered holders of Warrant Certificates at the time such Warrant Certificates are exercised as herein provided an amount in cash equal to the same fraction of the current market value of a share of Stock. For purposes of this Section 15(b), the current market value of a share of Stock shall be the closing price of a share of Stock (as determined pursuant to paragraph (c) below) for the trading day immediately prior to the date of such exercise.

(c) The closing price for each day shall be the last sale price, regular way, or, if no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such day, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Warrant or Stock, as the case may be, is not listed or admitted to trading on such exchange, as reported on the principal consolidated



transaction reporting system with respect to securities listed on the principal national securities exchange on which the Warrants or Stock, respectively, is listed or admitted to trading, or if the Warrants or Stock, as the case may be, is not listed or admitted to trading on any national securities exchange, as reported on Nasdaq/NNM or, if the Warrants or Stock, as the case may be, is not listed or admitted to trading on Nasdaq/NNM, as reported on NASDAQ.

SECTION 18. NOTICES TO WARRANTHOLDERS Upon any adjustment of the number of the shares of the Underlying Securities purchasable upon exercise of each Warrant, the Exercise Price or the number of Warrants outstanding pursuant to Section 14, the Company within 20 calendar days thereafter shall (i) cause to be filed with the Warrant Agent a certificate of a firm of independent public accountants of recognized standing selected by the Company (who may be the regular auditors of the Company) setting forth the Exercise Price and either the number of the shares of the Underlying Securities purchasable upon exercise of each Warrant or the additional number of Warrants to be issued for each previously outstanding Warrant, as the case may be, after such adjustment and setting forth in reasonable detail the method of calculation and the facts upon which such adjustment was made, which certificate shall be

11

15

conclusive evidence of the correctness of the matters set forth therein, and (ii) cause to be given to each of the registered holders of the Warrant Certificates at such holder's address appearing on the Warrant Register written notice of such adjustments by first class mail, postage prepaid. Where appropriate, such notice may be given in advance and included as part of the notice required to be mailed under the other provisions of this Section 16.

Pursuant to Sections 1, 6, 7 and 8, the Company shall cause written notice of such later Distribution Date, such later Expiration Date, such Call Price, Call Date and Call Terms and such Reduced Exercise Price and Reduced Exercise Price Period, as the case may be, to be given as soon as practicable to the Warrant Agent and to each of the registered holders of the Warrant Certificates by first class mail, postage prepaid, at such holder's address appearing on the Warrant Register. In addition to the written notice referred to in the preceding sentence, the Company shall make a public announcement in a daily morning newspaper of general circulation in New York City and in Boston of such earlier Distribution Date, such later Expiration Date, such Call Price, Call Date and Call Terms and such Reduced Exercise Price and Reduced Exercise Price Period, as the case may be, at least once a week for two successive weeks prior to the implementation of such terms.

If:

(a) the Company shall declare any dividend payable in any securities upon its shares of Common Stock or make any distribution (other than a cash dividend) to the holders of its shares of Common Stock, or

(b) the Company shall offer to the holders of its shares of Common Stock any additional shares of Stock or securities convertible into shares of Common Stock or any right to subscribe thereto (other than rights issued pursuant to the terms of the Stockholders Rights Plan adopted by the Board of Directors on December 11, 1989, as may be amended from time to time, or any

such other similar stock rights plan adopted by the Board of Directors), or

(c) there shall be a dissolution, liquidation or winding up of the Company (other than in connection with a consolidation, merger or sale of all or substantially all of its property, assets and business as an entirety),

then the Company shall (i) cause written notice of such event to be filed with the Warrant Agent and shall cause written notice of such event to be given to each of the registered holders of the Warrant Certificates at such holder's address appearing on the Warrant Register, by first class mail, postage prepaid, and (ii) make a public announcement in a daily newspaper of general circulation in New York City and Boston of such event, such giving of notice and publication to be completed at least 10 calendar days (or 20 calendar days in any case specified in clause (c) above) prior to the date fixed as a record date or the date of closing the transfer books for the determination of the stockholders entitled to such dividend, distribution or subscription rights, or for the determination of stockholders entitled to vote on such proposed dissolution, liquidation or winding up. Such notice shall specify such record

12

16

date or the date of closing the transfer books, as the case may be. The failure to give the notice required by this Section 16 or any defect therein shall not affect the legality or validity of any distribution, right, warrant, dissolution, liquidation or winding up or the vote upon or any other action taken in connection therewith.

SECTION 19. MERGER, CONSOLIDATION OR CHANGE OF NAME OF WARRANT AGENT. Any corporation into which the Warrant Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any corporation succeeding to the business of the Warrant Agent, shall be the successor to the Warrant Agent hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such corporation would be eligible for appointment as a successor Warrant Agent under the provisions of Section 19. If, at the time such successor to the Warrant Agent shall succeed under this Agreement, any of the Warrant Certificates shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent; and if at that time any of the Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Agreement.

If at any time the name of the Warrant Agent shall be changed and at such time any of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent whose name has changed may adopt the countersignature under its prior name; and if at that time any of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall have the



full force provided in the Warrant Certificates and in this Agreement.

SECTION 20. WARRANT AGENT. The Company hereby appoints the Warrant Agent as the Warrant Agent of the Company in respect of the Warrant Certificates upon the terms and subject to the conditions herein set forth, and the Warrant Agent hereby accepts such appointment. The Warrant Agent shall have the powers and authority granted to and conferred upon it in the Warrant Certificate and by this Agreement, and such further powers and authority to act on behalf of the Company as the Company may hereafter grant to or confer upon it. All of the terms and provisions with respect to such powers and authority contained in the Warrant Certificates are subject to and governed by the terms and provisions hereof.

SECTION 21. CONDITIONS OF WARRANT AGENT'S OBLIGATIONS. The Warrant Agent accepts its obligations herein set forth upon the terms and conditions hereof, including the following (to all of which the Company agrees and to all of which the rights hereunder of the holders from time to time of the Warrant Certificates shall be subject):

13

17

(a) PERFORMANCE BY THE COMPANY. The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Agreement.

(b) COMPENSATION AND INDEMNIFICATION. The Company agrees to pay to the Warrant Agent reasonable compensation for all services rendered by the Warrant Agent under this Agreement, to reimburse the Warrant Agent upon demand for all expenses, taxes and governmental charges and other charges of any kind and nature incurred by the Warrant Agent in the performance of its duties under this Agreement and to indemnify the Warrant Agent and save it harmless against any and all losses, liabilities and expenses, including judgments, costs and reasonable counsel fees, for anything done or omitted by the Warrant Agent arising out of or in connection with this Agreement except as a result of its negligence, bad faith or willful misconduct.

(c) AGENT FOR THE COMPANY. The Warrant Agent shall act hereunder solely as agent for the Company, and its duties shall be determined solely by the provisions hereof, and the Warrant Agent does not assume any obligation or relationship of agency or trust for or with any of the owners or holders of the Warrant Certificates. The Warrant Agent shall not be liable for anything which it may do or refrain from doing in connection with this Agreement except for its own negligence, bad faith or willful misconduct.

(d) COUNSEL. The Warrant Agent may consult at any time with counsel satisfactory to it (who may be counsel for the Company) and the Warrant Agent shall incur no liability or responsibility to the Company or any holder of any Warrant Certificate in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or the advice of such counsel.

(e) DOCUMENT. The Warrant Agent shall incur no liability or

responsibility to the Company or to any holder of any Warrant Certificate for any action taken in reliance on any notice, resolution, waiver, consent, order, certificate or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.

(f) CERTAIN TRANSACTIONS. The Warrant Agent, and any stockholder, director, officer or employee thereof, may buy, sell or deal in any of the Warrants or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though they were not the Warrant Agent under this Agreement, or a stockholder, director, officer or employee of the Warrant Agent, as the case may be. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

14

18

(g) NO LIABILITY FOR INTEREST. Except as set forth in the Warrant Agreement, the Warrant Agent shall not be under any liability for interest on any moneys or other consideration at any time received by it pursuant to any of the provisions of this Agreement or of the Warrant Certificates.

(h) NO LIABILITY FOR INVALIDITY AND NO RESPONSIBILITY FOR REPRESENTATIONS. The Warrant Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Warrant Agent) or in respect of the validity or execution of any Warrant Certificate (except its countersignature thereof), nor shall the Warrant Agent by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of the shares to be issued pursuant to this Agreement or any Warrant Certificate or as to whether the shares will when issued be validly issued, fully paid and nonassessable or as to the Exercise Price or the number of shares issuable upon exercise of any Warrant.

(i) NO LIABILITY FOR ACCEPTANCE OF INSTRUCTIONS. The Warrant Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from the President, any Vice President, the Treasurer, the Secretary or any Assistant Secretary of the Company, and to apply to such officers for advice or instructions in connection with its duties, and shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer or in good faith reliance upon any statement signed by any one of such officers of the Company with respect to any fact or matter (unless other evidence in respect thereof is herein specifically prescribed) which may be deemed to be conclusively proved and established by such signed statement.

(j) NO IMPLIED OBLIGATIONS. The Warrant Agent shall be obligated to perform such duties as are herein and in the Warrant Certificates specifically set forth, but no implied duties or obligations shall be read into this Agreement or the Warrant Certificates against the Warrant Agent. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or one or more registered holders of Warrant Certificates shall

furnish the Warrant Agent with reasonable security and indemnity for any costs or expenses which may be incurred. All rights of action under this Agreement or under any of the Warrants may be enforced by the Warrant Agent without the possession of any of the Warrant Certificates or the production thereof at any trial or other proceeding relative thereto, and any such action, suit or proceeding instituted by the Warrant Agent shall be brought in its name as Warrant Agent, and any recovery or judgment shall be for the ratable benefit of the registered holders of the Warrants, as their respective rights or interests may appear. The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of any of the Warrant Certificates authenticated by the Warrant Agent and delivered by it to the Company pursuant to this Agreement or for the application by the Company of the proceeds of the Warrant Certificates. The Warrant Agent shall have no duty or responsibility in case of any default by the Company in the performance of its covenants or agreements contained in the Warrant Certificates or in the case of the receipt of any written demand from a holder of a

15

19

Warrant Certificate with respect to such default, including any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon the Company.

SECTION 22. CHANGE OF WARRANT AGENT. If the Warrant Agent shall resign (such resignation to become effective not earlier than 60 days after the giving of written notice thereof to the Company and the registered holders of Warrant Certificates) or shall become incapable of acting as Warrant Agent or if the Board of Directors of the Company shall by resolution remove the Warrant Agent (such removal to become effective not earlier than 30 days after the filing of a certified copy of such resolution with the Warrant Agent and the giving of written notice of such removal to the registered holders of Warrant Certificates), the Company shall appoint a successor to the Warrant Agent. If the Company shall fail to make such appointment within a period of 30 days after such removal or after it has been so notified in writing of such resignation or incapacity by the Warrant Agent or by the registered holder of a Warrant Certificate (in the case of incapacity), then the registered holder of any Warrant Certificate may apply to any court of competent jurisdiction for the appointment of a successor to the Warrant Agent. Pending appointment of a successor to the Warrant Agent, either by the Company or by such a court, the duties of the Warrant Agent shall be carried out by the Company. Any successor Warrant Agent, whether appointed by the Company or by such a court, shall be in good standing, incorporated under the laws of any state or of the United States of America. As soon as practicable after appointment of the successor Warrant Agent, the Company shall cause written notice of the change in the Warrant Agent to be given to each of the registered holders of the Warrant Certificates at such holder's address appearing on the Warrant Register. After appointment, the successor Warrant Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Warrant Agent without further act or deed. The former Warrant Agent shall deliver and transfer to the successor Warrant Agent any property at the time held by it hereunder and execute and deliver, at the expense of the Company, any further assurance, conveyance, act or deed necessary for the purpose. Failure to give any notice provided in this Section 19 or any defect therein, shall not affect

the legality or validity of the removal of the Warrant Agent or the appointment of a successor Warrant Agent, as the case may be.

SECTION 23. WARRANTHOLDER NOT DEEMED A STOCKHOLDER. Nothing contained in this Agreement or in any of the Warrant Certificates shall be construed as conferring upon the holders thereof the right to vote or to receive dividends or to consent or to receive notice as stockholders in respect of the meetings of stockholders or for the election of directors of the Company or any other matter, or any rights whatsoever as stockholders of the Company.

SECTION 24. DELIVERY OF PROSPECTUS. If the Company is required under applicable federal or state securities laws to deliver a prospectus upon exercise of Warrants, the Company will furnish to the Warrant Agent sufficient copies of a prospectus, and the Warrant Agent agrees that upon the exercise of any Warrant Certificate by the holder thereof, the Warrant Agent will deliver to such holder, prior to or concurrently with the

16

20

delivery of the certificate or certificates for the shares of the Underlying Securities issued upon such exercise, a copy of the prospectus.

SECTION 25. NOTICES AND DEMANDS TO THE COMPANY AND WARRANT AGENT. If the Warrant Agent shall receive any notice or demand addressed to the Company by the holder of a Warrant Certificate pursuant to the provisions of the Warrant Certificates, the Warrant Agent shall promptly forward such notice or demand to the Company.

SECTION 26. PERSONS HAVING RIGHTS UNDER WARRANT AGREEMENT. Nothing in this Agreement is intended, or shall be construed, to confer upon, or give to, any person or corporation other than the Company, the Warrant Agent and the holders of the Warrant Certificates any right, remedy or claim under or by reason of this Agreement or of any covenant, condition, stipulation, promise or agreement hereof. All covenants, conditions, stipulations, promises and agreements contained in this Agreement shall be for the sole and exclusive benefit of the Company, the Warrant Agent and their successors and of the holders of the Warrant Certificates.

SECTION 27. INSPECTION OF AGREEMENT. A copy of this Agreement shall be available at all reasonable times at the principal office of the Warrant Agent for inspection by the holder of any Warrant Certificate. The Warrant Agent may require such holder to submit his Warrant Certificate for inspection by it.

SECTION 28. NOTICES TO COMPANY AND WARRANT AGENT. Any notice or demand authorized by this Agreement to be given or made by the Warrant Agent or by any registered holder of any Warrant Certificate to or on the Company shall be sufficiently given or made if sent by mail, first class or registered, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

Digital Equipment Corporation  
111 Powdermill Road

Maynard, MA 01754  
Attention: Ilene B. Jacobs, Vice President and Treasurer (MS02-2/F23)  
with a copy to Gail S. Mann, Esq., Secretary and Clerk (MS02-3/F13)

If the Company shall fail to maintain such office or agency or shall fail to give such notice of any change in the location thereof, presentation may be made and notices and demands may be served at the principal office of the Warrant Agent.

Any notice pursuant to this Agreement to be given by the Company or by any registered holder of any Warrant Certificate to the Warrant Agent shall be sufficiently given if sent by mail, first class or registered, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company) to the Warrant Agent at the address set forth in the Warrant Agreement.

17

21

SECTION 29. SUPPLEMENTS AND AMENDMENTS. The Company and the Warrant Agent may from time to time supplement or amend this Agreement without the approval of any holders of Warrant Certificates in order to designate Warrants pursuant to Section 1, to cure any ambiguity, manifest error or other mistake in this Agreement, or to correct or supplement any provision contained herein that may be defective or inconsistent with any other provision herein, or to make any other provisions in regard to matters or questions arising hereunder that the Company and the Warrant Agent may deem necessary or desirable and that shall not adversely affect, alter or change the interests of the holders of the Warrant Certificates.

SECTION 30. SUCCESSORS. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

SECTION 31. TERMINATION. This Agreement shall terminate at the close of business on the Expiration Date. Notwithstanding the foregoing, this Agreement will terminate on any earlier date when all Warrants have been exercised. The provisions of Section 18 shall survive such termination.

SECTION 32. GOVERNING LAW. This Agreement and each Warrant Certificate issued hereunder shall be deemed to be a contract made under the laws of the Commonwealth of Massachusetts and for all purposes shall be construed in accordance with the laws of such Commonwealth.

SECTION 33. BENEFITS OF THIS AGREEMENT. Nothing in this Agreement shall be construed to give to any person or corporation other than the Company, the Warrant Agent and the registered holders of the Warrant Certificates any legal or equitable right, remedy or claim under this Agreement, and this Agreement shall be for the sole and exclusive benefit of the Company, the Warrant Agent and the registered holders of the Warrant Certificates.

SECTION 34. COUNTERPARTS. This Agreement shall be exercised in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and such counterparts shall together constitute but

one and the same instrument.

SECTION 35. HEADINGS. The headings of sections of this Agreement have been inserted for convenience of reference only, are not be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 36. BOARD OF DIRECTORS. All references to any actions to be taken by the Company's Board of Directors shall be deemed to include actions taken by either the Company's Board of Directors or an authorized committee thereof.

TESTA, HURWITZ & THIBEAULT  
ATTORNEYS AT LAW

EXCHANGE PLACE, 53 STATE STREET  
BOSTON, MASSACHUSETTS 02109-2809

January 21, 1994

Digital Equipment Corporation  
146 Main Street  
Maynard, Massachusetts 01754

Ladies and Gentlemen:

This opinion is being delivered in connection with the registration under the Securities Act of 1933 by Digital Equipment Corporation, a Massachusetts corporation ("Digital" or the "Corporation"), of: (a) shares of its Preferred Stock, par value \$1.00 per share ("Preferred Stock"), in one or more series; (b) unsecured debt securities ("Debt Securities"), which may be either senior debt securities (the "Senior Debt Securities") or subordinated debt securities (the "Subordinated Debt Securities"), (c) depositary shares of the Corporation (the "Depositary Shares"); (d) warrants to purchase capital stock or Debt Securities of the Corporation or securities of another entity held by Digital (the "Warrants") (the Debt Securities, the Preferred Stock, the Depositary Shares and the Warrants are collectively referred to herein as the "Securities") having an aggregate initial public offering price of up to \$1,000,000,000 (or the equivalent in one or more foreign currencies or currency units) pursuant to a Registration Statement on Form S-3 (the "Registration Statement") being filed by the Corporation with the Securities and Exchange Commission. Capitalized terms not otherwise defined herein will have the meanings set forth in the Registration Statement.

In that connection, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following: (a) the Restated Articles of Organization of the Corporation, as amended (the "Restated Articles"); (b) the By-laws of the Corporation, as amended; (c) the Indenture relating to the Senior Debt Securities (the "Senior Indenture") between the Corporation and Citibank, N.A. (the "Senior Trustee"); (d) the proposed Form of Indenture relating to the Subordinated Debt



Securities (the "Subordinated Indenture") between the Corporation and Bankers Trust Company (the "Subordinated Trustee"); (e) the proposed Form of Deposit Agreement (the "Deposit Agreement"); (f) the proposed Form of Standard Debt Securities Warrant Agreement; and (g) the proposed Form of Standard Common Stock/Exchange Securities Warrant Agreement.

Based upon the foregoing, we are of the opinion that:

1. Digital is a corporation duly organized and validly existing under the laws of the Commonwealth of Massachusetts.

2

Digital Equipment Corporation  
Page 2  
January 21, 1994

2. Assuming that: (a) a valid certificate of designations fixing the preferences, voting powers, qualifications, and special or relative rights or privileges and limitations of any series of Preferred Stock has been validly authorized by appropriate votes of the Corporation's Board of Directors, or an authorized committee thereof, and executed and filed in accordance with the Restated Articles and applicable law, and any securities initially issuable upon conversion or exchange of the Preferred Stock have been duly authorized, created, and, if appropriate, reserved for issuance upon such conversion or exchange; and (b) certificates evidencing the Preferred Stock have been duly executed and delivered against receipt of consideration approved by the Corporation which is not less than the par value of the Preferred Stock, the Preferred Stock and any securities initially issuable upon conversion or exchange of the Preferred Stock, when issued and delivered will be duly authorized, validly issued, fully paid and nonassessable.

3. Assuming that: (a) the Deposit Agreement has been duly executed and delivered; (b) the applicable amount of Preferred Stock has been deposited with the Depositary; and (c) Depositary Receipts representing the Depositary Shares have been duly executed and delivered in accordance with the Deposit Agreement, and making the same assumptions with respect to the issuance of Preferred Stock set forth in the foregoing paragraph (2), the Depositary Shares will be duly and validly issued and will be entitled to the benefits of the applicable Deposit Agreement.

4. The Senior Indenture has been duly executed and delivered by the Corporation and the Senior Trustee. Assuming that: (a) the terms of the Senior Debt Securities have been determined in accordance with the Senior Indenture; (b) the Corporation's Board of Directors, or an authorized committee thereof, has authorized

the creation, issuance and sale of the Senior Debt Securities; (c) the Senior Debt Securities have been executed and authenticated in accordance with the terms of the Senior Indenture; (d) the Senior Debt Securities have been issued, sold and delivered in the manner and for the consideration stated in the Registration Statement, the Prospectus Supplement relating thereto and the Senior Indenture, the Senior Debt Securities will constitute legal, valid and binding obligations of the Corporation and will be entitled to the benefits of the Senior Indenture.

5. Assuming that: (a) the Subordinated Indenture has been duly executed and delivered; (b) the terms of the Subordinated Debt Securities have been determined in accordance with the Subordinated Indenture; (c) the Corporation's Board of Directors, or an authorized committee thereof, has authorized the creation, issuance and sale of the Subordinated Debt Securities and, if necessary, reserved the appropriate number of shares of Common

3

Digital Equipment Corporation  
Page 3  
January 21, 1994

Stock or securities of another entity held by Digital to be initially issued upon conversion or exchange of the Subordinated Debt Securities, (d) the Subordinated Debt Securities have been executed and authenticated in accordance with the terms of the Subordinated Indenture, and (e) the Subordinated Debt Securities have been issued, sold and delivered in the manner and for the consideration stated in the Registration Statement, the Prospectus Supplement relating thereto and the Subordinated Indenture, the Subordinated Debt Securities will constitute legal, valid and binding obligations of the Corporation and the shares of Common Stock that may be initially issuable upon the conversion of such Subordinated Debt Securities, when so issued in accordance with the terms of the Subordinated Indenture and the Subordinated Debt Securities, will be validly issued, fully paid and nonassessable.

6. Assuming that: (a) one or more warrant agreements (incorporating the provisions of the Form of Standard Common Stock/Exchange Securities Warrant Agreement filed as Exhibit 4.8 to the Registration Statement) under which the Warrants to purchase capital stock of the Corporation or securities of another entity held by Digital (the "Equity Warrants") will be issued have been duly executed and delivered by the Corporation and, if applicable, a warrant agent; (b) the terms of the Equity Warrants have been established in accordance with the appropriate warrant agreement; (c) the Corporation's Board of Directors, or an authorized committee thereof, has authorized the issuance and sale of the

Equity Warrants and has reserved an appropriate number of shares of capital stock to be initially issued upon the exercise of the Equity Warrants and has authorized the sale of any securities of another entity held by Digital; (d) the certificates representing Equity Warrants have been executed and authenticated in accordance with the terms of the appropriate warrant agreement; and (e) the Equity Warrants have been issued, sold and delivered in the manner and for the consideration stated in the Registration Statement, the Prospectus Supplement relating thereto and the appropriate warrant agreement, the Equity Warrants will constitute legal, valid and binding obligations of the Corporation and the shares of capital stock of the Corporation that may be initially issuable upon the exercise of such warrants, when so issued in accordance with the terms of the appropriate warrant agreement and against payment of the exercise price or other consideration set forth therein, will be validly issued, fully paid and nonassessable.

7. Assuming that: (a) one or more warrant agreements (incorporating the provisions of the Form of Standard Debt Securities Warrant Agreement filed as Exhibit 4.7 to the Registration Statement) under which the Warrants to purchase Debt Securities (the "Debt Warrants") will be issued have been duly executed and delivered by the Corporation and, if applicable, a

4

Digital Equipment Corporation  
Page 4  
January 21, 1994

warrant agent, (b) the terms of the Debt Warrants have been established in accordance with the appropriate warrant agreement; (c) the Corporation's Board of Directors, or an authorized committee thereof, has authorized the issuance and sale of the Debt Warrants and has established the terms of the Debt Securities to be issued upon exercise of the Debt Warrants; (d) the certificates representing the Debt Warrants have been executed and authenticated in accordance with the terms of the appropriate warrant agreement; and (e) the Debt Warrants have been issued, sold and delivered in the manner and for the consideration stated in the Registration Statement, the Prospectus Supplement relating thereto and the appropriate warrant agreement, and making the same assumptions with respect to the issuance of Debt Securities set forth in the foregoing paragraphs (4) and (5), the Debt Warrants will constitute legal, valid and binding obligations of the Corporation and the Debt Securities that may be issuable upon the exercise of such Debt Warrants, when so issued in accordance with the terms of the appropriate warrant agreement (against payment of the exercise price or other consideration set forth therein) and executed and authenticated in accordance with the terms of the Senior Indenture

or the Subordinated Indenture, as the case may be, will constitute legal, valid and binding obligations of the Corporation.

In connection with our opinions expressed above, we have assumed that, at or prior to the time of the delivery of any such Security, the Registration Statement has been declared effective and there will not have occurred any change in law affecting the validity or enforceability of such Security. We have also assumed that none of the terms of any Security to be established subsequent to the date hereof nor the issuance and delivery of such Security, nor the conversion of such security into another security, nor the exercise of any right under such Security to acquire another security, nor the compliance by the Corporation with the terms of such Security, will violate any applicable law or will result in a violation of any provision of any instrument or agreement then binding upon the Corporation or any restriction imposed by any court or governmental body having jurisdiction over the Corporation.

In addition, we express no opinion as to: (i) the effect of applicable bankruptcy, insolvency, fraudulent transfer, moratorium, reorganization or other laws of general applicability relating to or affecting creditors' rights; (ii) the effect of any general principles of equity; and (iii) the legality of any security issued by an entity other than the Corporation.

This opinion is limited to the laws of the Commonwealth of Massachusetts and the federal laws of the United States of America, without reference to choice of law provisions.

5

Digital Equipment Corporation  
Page 5  
January 21, 1994

We hereby consent to the filing of this opinion with the Securities and Exchange Commission in connection with the filing of the Registration Statement referred to above. We also consent to the use of our name in the related prospectus and any prospectus supplement under the heading "Legal Matters".

Very truly yours,

TESTA HURWITZ & THIBEAULT

&lt;TABLE&gt;

EXHIBIT 12

DIGITAL EQUIPMENT CORPORATION  
COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

&lt;CAPTION&gt;

	YEAR ENDED					SIX MONTHS ENDED	
	JULY 3, 1993	JUNE 27, 1992	JUNE 29, 1991	JUNE 30, 1990	JULY 1, 1989	JANUARY 1, 1994	DECEMBER 26, 1992
<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
Income before income taxes and cumulative effect of change in accounting principle.....	\$ (224,307)	\$ (2,078,012)	\$ (519,720)	\$ 123,989	\$ 1,420,675	\$ (163,590)	\$ (316,405)
Interest deemed to be included in rental expense (a).....	167,698	181,604	178,386	170,684	150,693	71,528	86,022
Interest expense -- other.....	55,384	38,517	44,556	30,641	39,435	40,597	16,344
Fixed charges as defined... (1)	223,082	220,121	222,942	201,325	190,128	112,125	102,366
Earnings before income taxes and cumulative effect of change in accounting principle plus fixed charges defined.... (2)	\$ (5,772)	\$ (1,857,891)	\$ (296,778)	\$ 325,314	\$ 1,610,803	\$ (57,028)	\$ (214,039)
Ratio of earnings to fixed charges (2) / (1) (b).....	(c)	(d)	(e)	1.6x (f)	8.5x	(g)	(h)

&lt;FN&gt;

- (a) Based on one-third of all rental expense, excluding rent on capitalized leases (being deemed representative of the interest factor in rental expense).
- (b) For the purpose of calculating the ratio of earnings to fixed charges, "earnings" consists of income before income taxes and "fixed charges." "Fixed charges" include interest on indebtedness and one-third of all rental expense, excluding rent on capitalized leases (being deemed representative of the interest factor in rental expense).
- (c) Earnings were inadequate to cover fixed charges by \$229 million.
- (d) Earnings were inadequate to cover fixed charges by \$2,078 million and by \$578 excluding restructuring charges.
- (e) Earnings were inadequate to cover fixed charges by \$519 million; the ratio would have been 3.6x excluding restructuring charges.
- (f) The ratio would have been 4.3x excluding restructuring charges.
- (g) Earnings were inadequate to cover fixed charges by \$169 million.
- (h) Earnings were inadequate to cover fixed charges by \$316 million.

&lt;/TABLE&gt;

## CONSENT OF CERTIFIED PUBLIC ACCOUNTANTS

We consent to the inclusion in this registration statement on form S-3 of our reports dated July 28, 1993, on our audits of the financial statements and financial statement schedules of Digital Equipment Corporation. We also consent to the reference to our firm under the caption "Experts."

COOPERS &amp; LYBRAND

Boston, Massachusetts  
January 21, 1994

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

FORM T-1

STATEMENT OF ELIGIBILITY UNDER  
THE TRUST INDENTURE ACT OF 1939 OF A CORPORATION  
DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY  
OF A TRUSTEE PURSUANT TO SECTION 305 (b) (2) \_\_\_\_\_

<TABLE>

BANKERS TRUST COMPANY  
(Exact name of trustee as specified in its charter)

<S> NEW YORK <C> 13-4941247  
(Jurisdiction of incorporation (I.R.S. Employer  
if not a U.S. national bank) identification no.)

FOUR ALBANY STREET  
NEW YORK, NEW YORK 10006  
(Address of principal (Zip Code)  
executive offices)

</TABLE>

<TABLE>

DIGITAL EQUIPMENT CORPORATION  
(Exact name of obligor as specified in the charter)

<S> MASSACHUSETTS <C> 04-2226590  
(State or other jurisdiction (I.R.S. employer  
of incorporation or organization) identification no.)

146 MAIN STREET  
MAYNARD, MASSACHUSETTS 01754-25711  
(Address of principal (Zip Code)  
executive offices)

</TABLE>

SUBORDINATED DEBT SECURITIES

(Title of the indenture securities)

ITEM 1. GENERAL INFORMATION.  
Furnish the following information as to the trustee.

<TABLE>

(a) Name and address of each examining or  
supervising authority to which it is subject.

<CAPTION>

NAME ADDRESS



----	-----
<S>	<C>
Federal Reserve Bank (2nd District)	New York, N.Y.
Federal Deposit Insurance Corporation	Washington, D.C.
New York State Banking Department	Albany, N.Y.

</TABLE>

(b) Whether it is authorized to exercise corporate trust powers.

Yes.

ITEM 2. AFFILIATIONS WITH OBLIGOR.

If the obligor is an affiliate of the Trustee, describe each such affiliation.

None.

ITEMS 3. - 15.

Not Applicable.

ITEM 16. LIST OF EXHIBITS.

EXHIBIT 1 - Restated Organization Certificate of Bankers Trust Company dated August 7, 1990 and Certificate of Amendment of the Organization Certificate of Bankers Trust Company dated June 23, 1992 - Incorporated herein by reference to Exhibit 1 filed with Form T-1 Statement, Registration No. 33-48267.

EXHIBIT 2 - Certificate of Authority to commence business - Incorporated herein by reference to Exhibit 2 filed with Form T-1 Statement, Registration No. 33-21047.

EXHIBIT 3 - Authorization of the Trustee to exercise corporate trust powers - Incorporated herein by reference to Exhibit 2 filed with Form T-1 Statement, Registration No. 33-21047.

3

-3-

EXHIBIT 4 - Existing By-Laws of Bankers Trust Company, dated as amended on January 21, 1992. - Incorporated herein by reference to Exhibit 4 filed with Form T-1 Statement, Registration No. 33-48267.

EXHIBIT 5 - Not applicable.

EXHIBIT 6 - Consent of Bankers Trust Company required by Section 321(b) of the Act. - Incorporated herein by reference to Exhibit 4 filed with Form T-1 Statement, Registration No. 22-18864.

EXHIBIT 7 - A copy of the latest report of condition of Bankers Trust Company dated as of September 30, 1993 - (Copy attached).

EXHIBIT 8 - Not Applicable

EXHIBIT 9 - Not Applicable

4

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939 the trustee, Bankers Trust Company, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 20th day of January 1994.

BANKERS TRUST COMPANY

By: Susan Johnson

-----  
 Susan Johnson  
 Assistant Vice President

5

<TABLE>  
 Consolidated Report of Condition for Insured Commercial  
 and State-Chartered Savings Banks for September 30, 1993

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding as of the last business day of the quarter.

- --- Schedule RC, Balance Sheet -----

ASSETS		<C>	<C>
<S>	<C>		
RCFD0081	Cash and balances due, noninterest-bearing balances & currency & coin		1,750,000
RCFD0071	Cash and balances due, interest-bearing balances		2,595,000
RCFD0390	Securities		4,514,000
RCFD0276	Federal funds sold		1,901,000
RCFD0277	Securities purchased under agreements to resell		366,000
RCFD2122	Loans and leases, net of unearned income	16,851,000	
RCFD3123	Less: allowance for loan and lease losses	1,412,000	
RCFD3128	Less: allocated transfer risk reserve	0	
RCFD2125	Loans and leases, net of unearned income, allowance, and reserve		15,439,000
RCFD2146	Assets held in trading accounts		30,848,000
RCFD2145	Premises and fixed assets (including capitalized leases)		684,000
RCFD2150	Other real estate owned		269,000
RCFD2130	Investments in unconsolidated subsidiaries and associated companies		158,000
RCFD2155	Customers' liability to this bank on acceptances outstanding		522,000
RCFD2143	Intangible assets		11,000
RCFD2160	Other assets		8,516,000
RCFD2170	Total assets		67,573,000

<FN>  
 (1) Includes cash items in process of collection and unposted debits.  
 (2) Includes time certificates of deposit not held in trading accounts.

</TABLE>

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6

<TABLE>  
 Schedule RC -- Continued

<S>	<C>	<C>	<C>
RCON2200	Deposits in domestic offices		8,459,000
RCON6631	Noninterest-bearing deposits, domestic	2,923,000	
RCON6636	Interest-bearing deposits, domestic	5,536,000	
RCFN2200	Deposits in foreign offices, Edge & Agreement subsidiaries, and IBFs		14,096,000
RCFN6631	Noninterest-bearing deposits, foreign	645,000	
RCFN6636	Interest-bearing deposits, foreign	13,451,000	
RCFD0278	Federal funds purchased		10,461,000
RCFD0279	Securities sold under agreements to repurchase		440,000
RCON2840	Demand notes issued to the U.S. Treasury		0
RCFD2850	Other borrowed money		14,625,000
RCFD2910	Mortgage indebtedness and obligations under capitalized leases		6,000

RCFD2920	Bank's liability on acceptances executed and outstanding	522,000
RCFD3200	Subordinated notes and debentures	1,277,000
RCFD2930	Other liabilities	13,985,000
RCFD2948	Total liabilities	63,871,000
RCFD3282	Limited-life preferred stock and related surplus	0
RCFD3838	Perpetual preferred stock and related surplus	250,000
RCFD3230	Common stock	702,000
RCFD3839	Surplus (exclude all surplus related to preferred stock)	498,000
RCFD3632	Undivided profits and capital reserves	2,566,000
RCFD0297	Less: Net unrealized loss on marketable equity securities	0
RCFD3284	Cumulative foreign currency translation adjustments	-314,000
RCFD3210	Total equity capital	3,702,000
RCFD3300	Total liabilities, limited-life preferred stock, and equity capital	67,573,000

<FN>

Memorandum

To be reported only with the March Report of Condition.

1. Indicate in the box at the right the number of the statement below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 1992

RCFD 6724 N/A

</TABLE>

- 1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank
- 2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)
- 3 = Director's examination of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm (may be required by state chartering authority)
- 4 = Director's examination of the bank performed by other external auditors (may be required by state chartering authority)
- 5 = Review of the bank's financial statements by external auditors
- 6 = Compilation of the bank's financial statements by external auditors
- 7 = Other audit procedures (excluding tax preparation work)
- 8 = No external audit work

(1) includes total demand deposits and noninterest-bearing time and savings deposits.