

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

FORM 10-Q

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

For the quarterly period ended September 30, 2006

OR

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

For the transition period from to

Commission file number 0-22418

ITRON, INC.

(Exact name of registrant as specified in its charter)

Washington
(State of incorporation)

91-1011792
(I.R.S. Employer Identification Number)

2111 North Molter Road
Liberty Lake, Washington 99019
(509) 924-9900
(Address and telephone number of registrant's principal executive offices)

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

As of September 29, 2006, there were outstanding 25,588,807 shares of the registrant's common stock, no par value, which is the only class of common stock of the registrant.

Itron, Inc.
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PART I: FINANCIAL INFORMATION

Item 1: Financial Statements (Unaudited)

ITRON, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(UNAUDITED)

	<u>Three Months Ended September 30,</u>		<u>Nine Months Ended September 30,</u>	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
	(in thousands, except per share data)			
Revenues				
Sales	\$ 152,023	\$ 128,683	\$ 446,934	\$ 355,696
Service	12,683	12,462	37,135	37,042
Total revenues	<u>164,706</u>	<u>141,145</u>	<u>484,069</u>	<u>392,738</u>
Cost of revenues				
Sales	90,319	73,179	260,279	203,188
Service	6,962	6,936	20,559	20,783
Total cost of revenues	<u>97,281</u>	<u>80,115</u>	<u>280,838</u>	<u>223,971</u>
Gross profit	67,425	61,030	203,231	168,767
Operating expenses				
Sales and marketing	15,176	13,688	46,978	40,456
Product development	15,626	11,807	43,416	35,135
General and administrative	12,463	11,645	37,104	33,381
Amortization of intangible assets	8,284	9,712	23,209	29,143
Restructurings	-	-	-	390
Total operating expenses	<u>51,549</u>	<u>46,852</u>	<u>150,707</u>	<u>138,505</u>
Operating income	15,876	14,178	52,524	30,262
Other income (expense)				
Interest income	3,467	69	4,189	167
Interest expense	(4,028)	(4,328)	(12,359)	(15,280)
Other income (expense), net	(187)	(535)	(876)	20
Total other income (expense)	<u>(748)</u>	<u>(4,794)</u>	<u>(9,046)</u>	<u>(15,093)</u>
Income before income taxes	15,128	9,384	43,478	15,169
Income tax (provision) benefit	(5,913)	(3,382)	(16,990)	963
Net income	<u>\$ 9,215</u>	<u>\$ 6,002</u>	<u>\$ 26,488</u>	<u>\$ 16,132</u>
Earnings per share				
Basic net income per share	<u>\$ 0.36</u>	<u>\$ 0.25</u>	<u>\$ 1.05</u>	<u>\$ 0.70</u>
Diluted net income per share	<u>\$ 0.35</u>	<u>\$ 0.23</u>	<u>\$ 1.01</u>	<u>\$ 0.66</u>
Weighted average number of shares outstanding				
Basic	25,552	24,441	25,343	22,912
Diluted	26,336	25,919	26,251	24,471

The accompanying notes are an integral part of these condensed consolidated financial statements.

ITRON, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(UNAUDITED)

	September 30,	December 31,
	2006	2005
	(in thousands)	
ASSETS		
Current assets		
Cash and cash equivalents	\$ 234,521	\$ 33,638
Short-term investments, held to maturity	171,733	-
Accounts receivable, net	97,033	104,428
Inventories	58,953	49,456
Deferred income taxes, net	22,455	23,194
Other	23,047	10,941
Total current assets	<u>607,742</u>	<u>221,657</u>
Property, plant and equipment, net	83,819	77,623
Intangible assets, net	109,937	123,293
Goodwill	119,586	116,032
Deferred income taxes, net	46,775	48,955
Other	17,161	11,324
Total assets	<u>\$ 985,020</u>	<u>\$ 598,884</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities		
Accounts payable and accrued expenses	\$ 52,666	\$ 46,215
Wages and benefits payable	24,802	23,732
Current portion of debt	-	4,376
Current portion of warranty	9,141	8,497
Unearned revenue	27,605	22,758
Total current liabilities	<u>114,214</u>	<u>105,578</u>
Long-term debt	469,299	160,186
Project financing debt	-	2,367
Warranty	9,463	6,779
Contingent purchase price	5,686	-
Other obligations	8,208	6,440
Total liabilities	<u>606,870</u>	<u>281,350</u>
Commitments and contingencies		
Shareholders' equity		
Preferred stock	-	-
Common stock	345,404	312,046
Accumulated other comprehensive income, net	1,641	871
Retained earnings	31,105	4,617
Total shareholders' equity	<u>378,150</u>	<u>317,534</u>
Total liabilities and shareholders' equity	<u>\$ 985,020</u>	<u>\$ 598,884</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

ITRON, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)

	Nine Months Ended September 30,	
	2006	2005
	(in thousands)	
Operating activities		
Net income	\$ 26,488	\$ 16,132
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	34,266	38,785
Employee stock plans income tax benefits	12,686	14,399
Excess tax benefits from stock-based compensation	(9,108)	-
Stock-based compensation	6,811	399
Amortization of prepaid debt fees	3,766	4,330
Deferred income taxes, net	2,784	(16,313)
Other, net	(1,208)	1,534
Changes in operating assets and liabilities, net of acquisitions:		
Accounts receivable	9,416	(4,738)
Inventories	(8,549)	(5,199)
Accounts payable and accrued expenses	3,622	360
Wages and benefits payable	1,088	7,412
Unearned revenue	5,758	(3,085)
Warranty	3,328	(194)
Other long-term obligations	(237)	(436)
Other, net	(3,923)	(3,832)
Net cash provided by operating activities	<u>86,988</u>	<u>49,554</u>
Investing activities		
Purchases of investments held to maturity	(170,434)	-
Acquisitions of property, plant and equipment	(25,878)	(10,264)
Business acquisitions, net of cash and cash equivalents acquired	(7,321)	-
Other, net	1,507	1,780
Net cash used in investing activities	<u>(202,126)</u>	<u>(8,484)</u>
Financing activities		
Proceeds from borrowings	345,000	-
Payments on debt	(42,703)	(122,704)
Issuance of common stock	13,375	82,269
Excess tax benefits from stock-based compensation	9,108	-
Prepaid debt fees	(8,759)	(391)
Other, net	-	28
Net cash provided by (used in) financing activities	<u>316,021</u>	<u>(40,798)</u>
Increase in cash and cash equivalents	200,883	272
Cash and cash equivalents at beginning of period	<u>33,638</u>	<u>11,624</u>
Cash and cash equivalents at end of period	<u>\$ 234,521</u>	<u>\$ 11,896</u>
<i>Non-cash operating and investing transactions:</i>		
Property, plant and equipment purchased but not yet paid	\$ 3,452	\$ -
Non-cash affects of acquisitions	637	-
<i>Supplemental disclosure of cash flow information:</i>		
Cash paid during the period for:		
Income taxes	\$ 3,215	\$ 1,536
Interest	5,738	8,986

The accompanying notes are an integral part of these condensed consolidated financial statements.

ITRON, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2006
(Unaudited)

In this Quarterly Report on Form 10-Q, the terms “we,” “us,” “our,” “Itron” and the “Company” refer to Itron, Inc.

Note 1: Summary of Significant Accounting Policies

Basis of Consolidation

The condensed consolidated financial statements presented in this Quarterly Report on Form 10-Q are unaudited and reflect entries necessary for the fair presentation of the Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2006 and 2005, Condensed Consolidated Balance Sheets as of September 30, 2006 and December 31, 2005 and Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2006 and 2005 of Itron and our consolidated subsidiaries. All entries required for the fair presentation of the financial statements are of a normal recurring nature. Intercompany transactions and balances are eliminated upon consolidation.

We consolidate all entities in which we have a greater than 50% ownership interest. We also consolidate entities in which we have a 50% or less investment and over which we have control. We use the equity method of accounting for entities in which we have a 50% or less investment and exercise significant influence. Entities in which we have less than a 20% investment and do not exercise significant influence are accounted for under the cost method. We consider for consolidation any variable interest entity of which we are the primary beneficiary. We are not the primary beneficiary of any variable interest entities.

On April 1, 2006, we completed the acquisition of Quantum Consulting, Inc., which is reported within our Software Solutions segment. On June 1, 2006, we completed the acquisition of ELO Sistemas e Tecnologia Ltda., located in Brazil, which is reported within our Electricity Metering segment. The operating results of these acquisitions are included in our condensed consolidated financial statements commencing on the date of each acquisition (see Note 5).

Certain information and note disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America (GAAP) have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission (SEC) regarding interim results. These condensed consolidated financial statements should be read in conjunction with the 2005 audited financial statements and notes included in our Annual Report on Form 10-K, as filed with the SEC on February 24, 2006. The results of operations for the three and nine months ended September 30, 2006 are not necessarily indicative of the results expected for the full fiscal year or for any other fiscal period.

Cash and Cash Equivalents

We consider all highly liquid instruments with remaining maturities of three months or less at the date of acquisition to be cash equivalents. Cash equivalents are recorded at cost, which approximates fair value. We placed the net proceeds of our \$345 million convertible senior subordinated notes (convertible notes) issued in August 2006 into cash equivalents and short-term investments (see Note 8).

Short-term investments

Investment securities are classified into one of three categories: held to maturity, trading or available for sale. Debt securities that we have the intent and ability to hold to maturity are classified as held to maturity and are reported at amortized cost (including amortization of premium or accretion of discount). Investment purchases and sales are accounted for on a trade date basis. Market value at a period end is based upon quoted market prices for each security. Realized gains and losses are determined using the specific identification method and are included in earnings. Premiums and discounts are recognized in interest income using the effective interest method over the terms of the securities.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable are recorded for invoices issued to customers in accordance with our contractual arrangements. Unbilled receivables are recorded when revenues are recognized upon product shipment or service delivery and invoicing occurs at a later date. The allowance for doubtful accounts is based on our historical experience of bad debts. Accounts receivable are written-off against the allowance when we believe an account, or a portion thereof, is no longer collectible.

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Inventories

Inventories are stated at the lower of cost or market using the first-in, first-out method. Cost includes raw materials and labor, plus applied direct and indirect costs, including those costs required under Statement of Financial Accounting Standards 151, *Inventory Costs—an amendment of ARB 43, Chapter 4*, (SFAS 151), which was effective for inventory costs incurred on or after January 1, 2006. SFAS 151 did not have a material effect on our financial statements. Service inventories consist primarily of subassemblies and components necessary to support post-sale maintenance. A large portion of our low-volume manufacturing and all of our domestic handheld meter reading unit repair services are provided by an outside vendor, Servatron. At December 31, 2005, we had a 30% equity interest in Servatron, which we sold back to Servatron in the first quarter of 2006 (see Note 12). Consigned inventory held by Servatron totaled \$3.7 million at September 30, 2006 and \$2.9 million at December 31, 2005.

Property, Plant and Equipment and Equipment used in Outsourcing

Property, plant and equipment are stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, generally thirty years for buildings and three to five years for equipment, computers and furniture. Leasehold improvements are capitalized over the term of the applicable lease, including renewable periods if reasonably assured, or over the useful lives, whichever is shorter. Project management costs incurred in connection with installation and equipment used in outsourcing contracts are depreciated using the straight-line method over the shorter of the useful life or the term of the contract. Costs related to internally developed software and software purchased for internal uses are capitalized in accordance with Statement of Position 98-1, *Accounting for Costs of Computer Software Developed or Obtained for Internal Use*. Repair and maintenance costs are expensed as incurred. We have no major planned maintenance activities.

We review long-lived assets for impairment whenever events or circumstances indicate the carrying amount of an asset may not be recoverable. There were no significant impairments in the three and nine months ended September 30, 2006 and 2005, respectively. If there was an indication of impairment, management would prepare an estimate of future cash flows (undiscounted and without interest charges) expected to result from the use of the asset and its eventual disposition. If these cash flows were less than the carrying amount of the assets, an impairment loss would be recognized to write down the assets to their estimated fair value. Assets held for sale are classified within other current assets in the Condensed Consolidated Balance Sheets and are reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated.

Prepaid Debt Fees

Prepaid debt fees represent direct costs incurred related to the issuance of long-term debt and are recorded in other noncurrent assets. These costs are amortized to interest expense over the lives of the respective borrowings using the effective interest method. Debt fees associated with convertible debt are amortized through the date of the earliest put or conversion option. When debt is repaid early, the portion of unamortized prepaid debt fees related to the early principal repayment is written-off and included in interest expense in the Condensed Consolidated Statements of Operations.

Acquisitions

In accordance with SFAS 141, *Business Combinations*, we record the results of operations of the acquired business from the date of acquisition. Net assets of the company acquired and intangible assets that arise from contractual/legal rights, or are capable of being separated, are recorded at their fair values at the date of acquisition. The balance of the purchase price after fair value allocations represents goodwill. Negative goodwill resulting from contingent consideration is recorded as a liability. Contingent payments subsequently made are then applied against the liability. Amounts allocated to in-process research and development (IPR&D) are expensed in the period of acquisition.

Goodwill and Intangible Assets

Goodwill is tested for impairment as of October 1 of each year, or more frequently, if a significant event occurs under the guidance of SFAS 142, *Goodwill and Other Intangible Assets*. Intangible assets with a finite life are amortized based on estimated discounted cash flows over estimated useful lives and tested for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. We use estimates in determining the value of goodwill and intangible assets, including estimates of useful lives of intangible assets, discounted future cash flows and fair values of the related operations. We forecast discounted future cash flows at the reporting unit level based on estimated future revenues and operating costs, which take into consideration factors such as existing backlog, expected future orders, supplier contracts and general market conditions.

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Warranty

We offer industry standard warranties on our hardware products and large application software products. Standard warranty accruals represent the estimated cost of projected warranty claims and are based on historical and projected product performance trends, business volume assumptions, supplier information and other business and economic projections. Testing of new products in the development stage helps identify and correct potential warranty issues prior to manufacturing. Continuing quality control efforts during manufacturing reduce our exposure to warranty claims. If our quality control efforts fail to detect a fault in one of our products, we could experience an increase in warranty claims. We track warranty claims to identify potential warranty trends. If an unusual trend is noted, an additional warranty accrual may be assessed and recorded when a failure event is probable and the cost can be reasonably estimated. Management continually evaluates the sufficiency of the warranty provisions and makes adjustments when necessary. The warranty allowances may fluctuate due to changes in estimates for material, labor and other costs we may incur to replace projected product failures, and we may incur additional warranty and related expenses in the future with respect to new or established product. The long-term warranty balance includes estimated warranty claims beyond one year.

A summary of the warranty accrual account activity is as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2006	2005	2006	2005
	(in thousands)			
Beginning balance	\$ 16,954	\$ 11,264	\$ 15,276	\$ 13,574
Electricity Metering acquisition adjustments	-	-	-	(2,128)
New product warranties	829	1,570	2,148	3,038
Other changes/adjustments to warranties	2,591	914	7,103	2,403
Claims activity	(1,770)	(2,497)	(5,923)	(5,636)
Ending balance, September 30	18,604	11,251	18,604	11,251
Less: current portion of warranty	(9,141)	(5,323)	(9,141)	(5,323)
Long-term warranty	<u>\$ 9,463</u>	<u>\$ 5,928</u>	<u>\$ 9,463</u>	<u>\$ 5,928</u>

Total warranty expense, which consists of new product warranties issued and other changes and adjustments to warranties, totaled approximately \$3.4 million and \$2.5 million for the three months ended September 30, 2006 and 2005 and approximately \$9.3 million and \$5.4 million for the nine months ended September 30, 2006 and 2005, respectively. Warranty expense is classified within cost of sales.

Health Benefits

We are self insured for a substantial portion of the cost of employee group health insurance. We purchase insurance from a third party, which provides individual and aggregate stop loss protection for these costs. Each reporting period, we expense the costs of our health insurance plan including paid claims, the change in the estimate of incurred but not reported (IBNR) claims, taxes and administrative fees (collectively the plan costs). Plan costs were approximately \$3.6 million and \$3.2 million for the three months ended September 30, 2006 and 2005 and approximately \$10.7 million and \$11.1 million for the nine months ended September 30, 2006 and 2005, respectively. The IBNR accrual, which is included in wages and benefits payable, was \$2.0 million and \$2.1 million at September 30, 2006 and December 31, 2005, respectively. Fluctuations in the IBNR accrual are the result of claims activity.

Contingencies

An estimated loss for a contingency is recorded if it is probable that an asset has been impaired or a liability has been incurred and the amount of the loss can be reasonably estimated. We evaluate, among other factors, the degree of probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of loss. Changes in these factors could materially affect our financial position, results of operations and cash flows.

Income Taxes

We account for income taxes using the asset and liability method. Under this method, deferred income taxes are recorded for the temporary differences between the financial reporting basis and tax basis of our assets and liabilities. These deferred taxes are measured using the tax rates expected to be in effect when the temporary differences reverse. We establish a valuation

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allowance for a portion of the deferred tax asset when we believe it is more likely than not that a portion of the deferred tax asset will not be utilized. Deferred tax liabilities have been recorded on undistributed earnings of foreign subsidiaries.

Foreign Exchange

Our condensed consolidated financial statements are prepared in U.S. dollars. Assets and liabilities of foreign subsidiaries are denominated in foreign currencies and are translated to U.S. dollars at the exchange rates in effect on the balance sheet date. Revenues, costs of revenues and expenses for these subsidiaries are translated using a weighted average rate for the relevant reporting period. Translation adjustments resulting from this process are included, net of tax, in accumulated other comprehensive income (loss) in shareholders' equity. Gains and losses that arise from exchange rate fluctuations for balances that are not denominated in the local currency are included in the Condensed Consolidated Statements of Operations unless those balances arose from intercompany transactions deemed to be long-term in nature. Currency gains and losses for this exception are included, net of tax, in accumulated other comprehensive income (loss) in shareholders' equity.

Revenue Recognition

Sales consist of hardware, software license fees, custom software development, field and project management service and engineering, consulting, implementation, installation and professional service revenues. Service revenues include post-sale maintenance support and outsourcing services. Outsourcing services include installation, operation and maintenance of meter reading systems to provide meter information to a customer for billing and management purposes. Outsourcing services can be provided for systems we own, as well as those owned by our customers.

Revenue arrangements with multiple deliverables are divided into separate units of accounting if the delivered item(s) have value to the customer on a standalone basis, there is objective and reliable evidence of fair value of the undelivered item(s) and delivery/performance of the undelivered item(s) is probable. The total arrangement consideration is allocated among the separate units of accounting based on their relative fair values and the applicable revenue recognition criteria considered for each unit of accounting. For our standard contract arrangements that combine deliverables such as hardware, meter reading system software, installation and project management services, each deliverable is generally considered a single unit of accounting. The amount allocable to a delivered item is limited to the amount that we are entitled to bill and collect and is not contingent upon the delivery/performance of additional items.

Revenues are recognized when (1) persuasive evidence of an arrangement exists, (2) delivery has occurred or services have been rendered, (3) the sales price is fixed or determinable and (4) collectibility is reasonably assured. Hardware revenues are generally recognized at the time of shipment, receipt by customer, or, if applicable, upon completion of customer acceptance provisions. For software arrangements with multiple elements, revenue recognition is also dependent upon the availability of vendor-specific objective evidence (VSOE) of fair value for each of the elements. The lack of VSOE, or the existence of extended payment terms or other inherent risks, may affect the timing of revenue recognition for software arrangements. If implementation services are essential to a software arrangement, revenue is recognized using either the percentage of completion methodology if project costs can be estimated or the completed contract methodology if project costs can not be reliably estimated. Hardware and software post-sale maintenance support fees are recognized ratably over the life of the related service contract. Under outsourcing arrangements, revenue is recognized as services are provided. Certain consulting services are recognized as services are performed.

Unearned revenue is recorded for products or services that have not been provided but have been invoiced under contractual agreements or paid for by a customer, or when products or services have been provided but the criteria for revenue recognition have not been met.

Product and Software Development Expenses

Product and software development expenses primarily include payroll and third party contracting fees. For software we develop to be marketed or sold, financial accounting standards require the capitalization of development costs after technological feasibility is established. Due to the relatively short period of time between technological feasibility and the completion of product development, and the immaterial nature of these costs, we do not capitalize software development. Product and software development costs are generally expensed when incurred.

Earnings Per Share

Basic earnings per share (EPS) is calculated using net income (loss) divided by the weighted average common shares outstanding during the period. We compute dilutive earnings per share by adjusting the weighted average number of common shares outstanding to consider the effect of the potentially dilutive securities, including stock based awards and convertible debt. Shares that are contingently issuable are included in the dilutive EPS calculation as of the beginning of the period when

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all necessary conditions have been satisfied. For periods in which we report a net loss, diluted net loss per share is the same as basic net loss per share.

Stock-Based Compensation

On January 1, 2006, we adopted SFAS 123(R), *Share-Based Payment*, which requires the measurement and recognition of compensation expense for all stock-based awards made to employees and directors based on estimated fair values. SFAS 123(R) supersedes Accounting Principles Board (APB) Opinion 25, *Accounting for Stock Issued to Employees*. In March 2005, the SEC issued Staff Accounting Bulletin 107 (SAB 107) relating to SFAS 123(R). We have applied the provisions of SAB 107 in our adoption of SFAS 123(R).

We adopted SFAS 123(R) using the modified prospective transition method, which requires the application of the accounting standard as of January 1, 2006, the first day of our fiscal year 2006. Our condensed consolidated financial statements, as of and for the three and nine months ended September 30, 2006, reflect the impact of SFAS 123(R). In accordance with the modified prospective transition method, our condensed consolidated financial statements for prior periods have not been restated to reflect, and do not include the impact of, SFAS 123(R).

Stock-based compensation expense recognized under SFAS 123(R) for the three and nine months ended September 30, 2006 was \$2.7 million and \$6.8 million, respectively, before income taxes, which includes awards of stock options, Employee Stock Purchase Plan (ESPP) and restricted and unrestricted stock. The related total tax benefit was \$493,000 and \$1.0 million respectively, for the three and nine months ended September 30, 2006. There was no stock-based compensation capitalized at September 30, 2006. Stock-based compensation expense of \$179,000 and \$399,000 for the three and nine months ended September 30, 2005 was related to stock grants and employee stock purchases that we recognized under previous accounting standards. There was no stock-based compensation expense related to employee stock options recognized during the three and nine months ended September 30, 2005. We expense stock-based compensation using the straight-line method.

The adoption of SFAS 123(R) resulted in incremental stock-based compensation expense and a corresponding decrease to pre-tax income of \$2.4 million and \$6.2 million for the three and nine month periods ended September 30, 2006. A substantial portion of our stock-based compensation can not be expensed for tax purposes. This resulted in a decrease to income after tax of \$2.0 million, or \$0.08 per basic and diluted share for the quarter and \$5.4 million, or \$0.21 per basic and diluted share year-to-date. Prior to the adoption of SFAS 123(R), we presented all tax benefits resulting from the exercise of stock options as operating cash inflows. Under SFAS 123(R), the benefits of tax deductions in excess of the compensation cost recognized are classified as financing cash inflows rather than operating cash inflows, on a prospective basis. Cash provided by operating activities decreased and cash provided by financing activities increased by \$9.1 million, respectively, related to excess tax benefits from stock awards exercised during the nine month period ended September 30, 2006.

The following table shows the effect on net earnings and earnings per share, for the three and nine months ended September 30, 2005, had compensation cost been recognized based upon the estimated fair value on the grant date of stock options and ESPP in accordance with SFAS 123, *Accounting for Stock-based Compensation*, as amended by SFAS 148, *Accounting for Stock-Based Compensation—Transition and Disclosure*. Disclosures for the three and nine month periods ended September 30, 2006 are not presented because the amounts are recognized in the condensed consolidated financial statements.

	Three Months Ended September 30, 2005	Nine Months Ended September 30, 2005
	(in thousands, except per share data)	
Net income		
As reported	\$ 6,002	\$ 16,132
Deduct: stock-based compensation, net of tax	<u>(1,009)</u>	<u>(4,078)</u>
Pro forma net income	<u>\$ 4,993</u>	<u>\$ 12,054</u>
Basic net income per share		
As reported	<u>\$ 0.25</u>	<u>\$ 0.70</u>
Pro forma	<u>\$ 0.20</u>	<u>\$ 0.53</u>
Diluted net income per share		
As reported	<u>\$ 0.23</u>	<u>\$ 0.66</u>
Pro forma	<u>\$ 0.19</u>	<u>\$ 0.50</u>

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The fair value of stock options and ESPP awards issued during the three and nine month periods ended September 30, 2006 and 2005 were estimated at the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions.

	Employee Stock Options			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2006	2005	2006	2005
Dividend yield	-	-	-	-
Expected volatility	43.2%	58.0%	43.1%	59.0%
Risk-free interest rate	4.9%	4.1%	4.9%	3.7%
Expected life (years)	4.59	3.40	4.58	3.40

	ESPP			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2006	2005 ⁽¹⁾	2006	2005
Dividend yield	-	-	-	-
Expected volatility	43.5%	-	46.6%	50.9%
Risk-free interest rate	5.1%	-	4.6%	2.5%
Expected life (years)	0.25	-	0.25	0.25

⁽¹⁾ There was no ESPP activity for the three month period ended September 30, 2005.

For 2006, expected price volatility is based on a combination of historical volatility of the Company's stock and the implied volatility of its traded options, for the related vesting period. Prior to the adoption of SFAS 123(R), expected stock price volatility was estimated using only historical volatility. The risk-free interest rate is the rate available as of the award date on zero-coupon U.S. government issues with a remaining term equal to the expected life of the award. The expected life is the weighted average expected life for the entire award based on the fixed period of time between the date the award is granted and the date the award is fully exercised. Factors to be considered in estimating the expected life are historical experience of similar awards, giving consideration to the contractual terms, vesting schedules and expectations of future employee behavior. We have not paid dividends in the past and do not plan to pay any dividends in the foreseeable future.

For restricted and unrestricted stock, the fair value is the market close price of the stock on the grant date.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Because of various factors affecting future costs and operations, actual results could differ from estimates.

New Accounting Pronouncements

In July 2006, the Financial Accounting Standards Board (FASB) issued Financial Interpretation 48 (FIN 48), *Accounting for Uncertainty in Income Taxes—an interpretation of FASB 109*, which clarifies the accounting for uncertainty in income taxes recognized in a company's financial statements and is effective for fiscal years beginning after December 15, 2006. We are currently evaluating the impact of the adoption of FIN 48 on our financial statements.

In September 2006, the FASB issued SFAS 157, *Fair Value Instruments* (SFAS 157), which defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007, on a prospective basis. We are currently evaluating the impact of the adoption of SFAS 157 on our financial statements.

In September 2006, the SEC released Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements*, (SAB 108), which provides the staff's views regarding the process of quantifying financial statement misstatements, such as assessing both the carryover and reversing effects of prior year misstatements on the current year financial statements. SAB 108 is effective for years ending after November 15, 2006. We are currently evaluating the impact of the adoption of SAB 108 on our financial statements.

[Table of Contents](#)**Note 2: Earnings Per Share and Capital Structure**

The following table sets forth the computation of basic and diluted EPS:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2006	2005	2006	2005
	(in thousands, except per share data)			
Basic earnings per share:				
Net income available to common shareholders	\$ 9,215	\$ 6,002	\$ 26,488	\$ 16,132
Weighted average number of shares outstanding	25,552	24,441	25,343	22,912
Basic net income per share	\$ 0.36	\$ 0.25	\$ 1.05	\$ 0.70
Diluted earnings per share:				
Net income available to common shareholders	\$ 9,215	\$ 6,002	\$ 26,488	\$ 16,132
Weighted average number of shares outstanding	25,552	24,441	25,343	22,912
Effect of dilutive securities: stock-based awards	784	1,478	908	1,559
Adjusted weighted average number of shares outstanding	26,336	25,919	26,251	24,471
Diluted net income per share	\$ 0.35	\$ 0.23	\$ 1.01	\$ 0.66

The dilutive effect of stock-based awards is calculated using the treasury stock method. Under this method, EPS is computed as if the awards were exercised at the beginning of the period (or at time of issuance, if later) and assumes the related proceeds were used to repurchase common stock at the average market price during the period. Related proceeds include the amount the employee must pay upon exercise, future compensation cost associated with the stock award and the amount of excess tax benefits. Weighted average common shares outstanding, assuming dilution, include the incremental shares that would be issued upon the assumed exercise of stock-based awards. At September 30, 2006 and 2005, we had stock-based awards outstanding of approximately 2.3 million and 2.5 million at weighted average option exercise prices of \$29.19 and \$20.88, respectively. Approximately 368,000 and 11,000 stock-based awards were excluded from the calculation of diluted EPS for the three months ended September 30, 2006 and 2005, respectively, because they were anti-dilutive. Approximately 150,000 and 316,000 stock-based awards were excluded from the calculation of diluted EPS for the nine months ended September 30, 2006 and 2005, respectively, because they were anti-dilutive. These stock-based awards could be dilutive in future periods.

In August 2006, we issued \$345 million of convertible notes that if converted in the future, would have a potentially dilutive effect on our stock (see Note 8). Under the indenture for the convertible notes, upon conversion we are required to settle the principal amount of the convertible notes in cash and may elect to settle the remaining conversion obligation (stock price in excess of conversion price) in cash, shares or a combination. As a result, the effect on diluted earnings per share is calculated under the net share settlement method in accordance with the FASB's Emerging Issues Task Force 04-8, *The Effect of Contingently Convertible Instruments on Diluted Earnings per Share*. Under the net share settlement method, we include the amount of shares it would take to satisfy the conversion obligation, assuming that all of the convertible notes are surrendered. The average closing price of our common stock for each of the periods presented is used as the basis for determining dilution. As the conversion criteria had not been met, the convertible notes had no effect on diluted earnings per share.

We have authorized 10.0 million shares of preferred stock with no par value. In the event of a liquidation, dissolution or winding up of the affairs of the corporation, whether voluntary or involuntary, the holders of any preferred stock at the time outstanding will be entitled to be paid a preferential amount per share to be determined by the Board of Directors prior to any payment to holders of common stock. Shares of preferred stock may be converted into common stock based on terms, conditions, rates and subject to such adjustments set by the Board of Directors. There was no preferred stock issued or outstanding at September 30, 2006 and 2005.

Note 3: Short-term Investments, Held to Maturity

Our investments are classified as held to maturity, have original maturities of less than one year and consist primarily of U.S. government and federal agencies and commercial paper. We have the intent and ability to hold these investments to maturity. The securities are reported at their amortized cost with premiums and discounts recognized in interest income using the effective interest method over the terms of the securities. Any

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impairment to the fair value of the securities is considered temporary due to the short-term nature of the investments, with recovery of fair value expected at maturity.

The amortized cost and fair value of our investments at September 30, 2006 were as follows:

	<u>Amortized Cost</u>	<u>Gross Unrealized Gains</u>	<u>Gross Unrealized Losses</u>	<u>Fair Value</u>
	(in thousands)			
U.S. government and federal agencies	\$ 151,858	\$ 61	\$ -	\$ 151,919
Commercial paper	19,875	2	(9)	19,868
Total investments held to maturity	<u>\$ 171,733</u>	<u>\$ 63</u>	<u>\$ (9)</u>	<u>\$ 171,787</u>

Note 4: Certain Balance Sheet Components

Accounts receivable, net

	<u>At September 30, 2006</u>	<u>At December 31, 2005</u>
	(in thousands)	
Trade (net of allowance for doubtful accounts of \$451 and \$598)	\$ 87,035	\$ 96,106
Unbilled revenue	9,998	8,322
Total accounts receivable, net	<u>\$ 97,033</u>	<u>\$ 104,428</u>

A summary of the allowance for doubtful accounts activity is as follows:

	<u>Three Months Ended September 30,</u>		<u>Nine Months Ended September 30,</u>	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
	(in thousands)			
Beginning balance	\$ 469	\$ 711	\$ 598	\$ 1,312
Provision (benefit) for doubtful accounts	(18)	(79)	(123)	(236)
Accounts charged off	-	(5)	(24)	(449)
Ending balance, September 30	<u>\$ 451</u>	<u>\$ 627</u>	<u>\$ 451</u>	<u>\$ 627</u>

Inventories

A summary of the inventory balances is as follows:

	<u>At September 30, 2006</u>	<u>At December 31, 2005</u>
	(in thousands)	
Materials	\$ 29,084	\$ 25,744
Work in process	4,420	5,832
Finished goods	23,990	16,241
Total manufacturing inventories	57,494	47,817
Service inventories	1,459	1,639
Total inventories	<u>\$ 58,953</u>	<u>\$ 49,456</u>

Other current assets

Assets held for sale are classified within other current assets and are reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated. As of March 31, 2006, our previous headquarters building in Spokane Valley was listed for sale. As a result, the net carrying value of the Spokane Valley facility of approximately \$8.6 million was transferred from property, plant and equipment to other current assets.

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Property, plant and equipment, net

	<u>At September 30, 2006</u>	<u>At December 31, 2005</u>
	(in thousands)	
Machinery and equipment	\$ 54,577	\$ 47,709
Equipment used in outsourcing	16,086	16,086
Computers and purchased software	37,651	34,736
Buildings, furniture and improvements	45,442	45,611
Land	2,482	4,217
Total cost	<u>156,238</u>	<u>148,359</u>
Accumulated depreciation	<u>(72,419)</u>	<u>(70,736)</u>
Property, plant and equipment, net	<u>\$ 83,819</u>	<u>\$ 77,623</u>

Depreciation expense was \$3.7 million and \$3.0 million for the three months ended September 30, 2006 and 2005, respectively. Depreciation expense was \$11.1 million and \$9.7 million for the nine months ended September 30, 2006 and 2005, respectively.

On December 30, 2005, we completed the purchase of a building in Liberty Lake, Washington, which became our corporate headquarters in the third quarter of 2006. We have invested approximately \$10.5 million in capital improvements. For the three and nine month periods ended September 30, 2006, we capitalized interest costs of approximately \$500,000 and \$900,000, respectively, relating to improvements to our new corporate headquarters. Capital improvements were substantially complete at September 30, 2006.

Note 5: Business Combinations

Quantum Consulting, Inc.

On April 1, 2006, we completed the acquisition of Quantum Consulting, Inc. (Quantum), an energy consulting firm. The acquisition expands our consulting services related to energy efficiency, planning design and market research in our Software Solutions segment. The preliminary purchase price, net of cash acquired of \$81,000, is summarized as follows (in thousands):

Cash consideration, net of cash acquired	\$ 4,015
Direct transaction costs	<u>476</u>
Total purchase price	<u>\$ 4,491</u>

Of the purchase price consideration, \$400,000 is retained in an escrow account for indemnifications made by Quantum. The amount in escrow will be released at predetermined intervals through April 2008. Additional contingent consideration of up to \$1.0 million will be paid to Quantum shareholders if certain defined financial targets are achieved in 2006, 2007 and 2008. These additional payments will increase the purchase price and goodwill at the time the financial targets are achieved. An additional payment will also be made to Quantum shareholders, of up to \$1.0 million, if certain key individuals remain employees through March 2009. A substantial portion of the payment will be recognized as compensation expense over the retention period.

The following financial information reflects a preliminary allocation of the purchase price based on estimated fair values of assets and liabilities as of the date of acquisition. The fair value adjustments are substantially complete. The excess of the purchase price over the fair value of net assets acquired has been recorded as goodwill.

	<u>April 1, 2006</u>	
	<u>Fair Value</u>	<u>Useful Life</u>
	<u>(in thousands)</u>	<u>(in months)</u>
Fair value of net assets assumed	\$ 446	
Identified intangible assets - amortizable		
Non-compete agreements	670	54
Contract backlog	360	36
Goodwill	<u>3,015</u>	
Total purchase price	<u>\$ 4,491</u>	

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The values assigned to the identified intangible assets were estimated using the income approach. Under the income approach, the fair value reflects the present value of the projected cash flows that are expected to be generated. The intangible assets will be amortized over the estimated useful lives of the estimated discounted cash flows assumed in the valuation models. Goodwill and intangible assets were allocated to our Software Solutions segment in accordance with SFAS 142.

ELO Sistemas e Tecnologia Ltda.

On June 1, 2006, we completed the acquisition of ELO Sistemas e Tecnologia Ltda. (ELO) for an initial cash payment of approximately \$1.9 million, subject to a working capital adjustment expected to be paid in the fourth quarter of 2006. Cash consideration also included the settlement of a \$637,000 payable from ELO to us for inventory purchased by ELO prior to the acquisition. Additional contingent consideration will be payable if certain financial targets are achieved over the next five years. Operations reside in Campinas, Brazil and include sales, manufacturing, service and maintenance, consulting and administrative functions related to meters, automatic meter reading (AMR) technology and related systems in South America. The preliminary purchase price, which includes direct transaction costs, net of cash acquired of \$10,000, is summarized as follows (in thousands):

Cash consideration, net of cash acquired	\$	2,539
Direct transaction costs		<u>1,120</u>
Total purchase price	\$	<u><u>3,659</u></u>

The purchase price was allocated to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values as of the date of acquisition. The estimated fair value of the net assets acquired and liabilities assumed exceeded the initial cash consideration paid by approximately \$5.5 million, resulting in negative goodwill. In a business combination with contingent consideration, the lesser of the maximum amount of contingent consideration or the total amount of negative goodwill should be recorded as a liability. As the purchase agreement does not limit the maximum contingent consideration payable, the full amount of the negative goodwill is reflected as a long-term liability. If contingent payments are made, we will apply the payments against the contingent liability. Payments in excess of the contingent liability balance, if any, will be recorded as goodwill.

The following financial information reflects a preliminary allocation of the purchase price based on estimated fair values of assets and liabilities as of the date of acquisition. We are continuing to review the assets acquired and liabilities assumed, including intangible assets and the associated lives, and expect to finalize a majority of the fair value adjustments by the end of 2006.

	June 1, 2006	
	Fair Value	Useful Life
	(in thousands)	(in months)
Fair value of net assets assumed	\$	655
Identified intangible assets - amortizable		
Customer relationships/contracts	6,697	175
Contract backlog	1,731	12
Contingent purchase price liability	<u>(5,424)</u>	
Total purchase price	\$	<u><u>3,659</u></u>

The values assigned to the identified intangible assets were estimated using the income approach. Under the income approach, the fair value reflects the present value of the projected cash flows that are expected to be generated. The intangible assets will be amortized over the estimated useful lives of the estimated discounted cash flows assumed in the valuation models. Goodwill and intangible assets were allocated to our Electricity Metering segment in accordance with SFAS 142. Due to changes in foreign currency exchange rates, the contingent purchase price liability can increase or decrease, with a corresponding change in accumulated other comprehensive income (loss). The contingent purchase price liability was approximately \$5.7 million at September 30, 2006.

Pro forma results are not presented for the acquisitions of Quantum and ELO because they were not considered material business combinations in accordance with SFAS 141.

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Note 6: Identified Intangible Assets

The gross carrying amount and accumulated amortization of our intangible assets, other than goodwill, are as follows:

	At September 30, 2006			At December 31, 2005		
	Gross Assets	Accumulated Amortization	Net	Gross Assets	Accumulated Amortization	Net
	(in thousands)					
Core-developed technology	\$ 154,330	\$ (72,031)	\$ 82,299	\$ 154,330	\$ (54,064)	\$ 100,266
Patents	7,088	(4,967)	2,121	7,088	(4,690)	2,398
Capitalized software	5,065	(5,065)	-	5,065	(5,065)	-
Distribution and production rights	3,935	(3,343)	592	3,935	(3,220)	715
Customer contracts	15,766	(7,657)	8,109	8,750	(7,028)	1,722
Trademarks and tradenames	25,710	(10,923)	14,787	25,710	(7,634)	18,076
Other	9,296	(7,267)	2,029	6,450	(6,334)	116
Total identified intangible assets	<u>\$ 221,190</u>	<u>\$ (111,253)</u>	<u>\$ 109,937</u>	<u>\$ 211,328</u>	<u>\$ (88,035)</u>	<u>\$ 123,293</u>

A summary of the identifiable intangible asset account activity is as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2006	2005	2006	2005
	(in thousands)			
Beginning balance	\$ 221,121	\$ 211,328	\$ 211,328	\$ 211,328
Intangible assets acquired (adjusted)	(172)	-	9,458	-
Effect of change in exchange rates	241	-	404	-
Ending balance, total intangible assets, gross	<u>\$ 221,190</u>	<u>\$ 211,328</u>	<u>\$ 221,190</u>	<u>\$ 211,328</u>

Increases in identified intangible assets were the result of the Quantum and ELO acquisitions in the second quarter of 2006, with adjustments to the valuation of the assets acquired occurring in the third quarter of 2006. The carrying amount of intangible assets can also increase or decrease, with a corresponding change in accumulated other comprehensive income (loss), due to changes in foreign currency exchange rates for those intangible assets owned by our foreign subsidiaries. At September 30, 2006, the intangible assets associated with the ELO acquisition increased approximately \$400,000 as a result of a change in foreign currency rates. Intangible asset amortization expense was approximately \$8.3 million and \$9.7 million for the three months ended September 30, 2006 and 2005, respectively. Intangible asset amortization expense was approximately \$23.2 million and \$29.1 million for the nine months ended September 30, 2006 and 2005, respectively.

Estimated annual amortization expense is as follows:

	Estimated Annual Amortization
	(in thousands)
2006 (remaining)	\$ 7,778
2007	25,330
2008	22,168
2009	18,709
2010	13,046
Beyond 2010	22,906
Total identified intangible assets, net	<u>\$ 109,937</u>

Note 7: Goodwill

On April 1, 2006, we completed the acquisition of Quantum and recorded a preliminary allocation of the purchase price, resulting in \$3.0 million of estimated goodwill. On July 1, 2004, we completed the acquisition of our Electricity Metering business and continued to make adjustments to the purchase price through June 2005 as the valuation of assets and liabilities were finalized. Goodwill decreased in 2005 primarily due to a \$2.1 million adjustment related to a warranty accrual

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associated with the Electricity Metering acquisition. Goodwill balances can also increase or decrease, with a corresponding change in accumulated other comprehensive income (loss), due to changes in foreign currency exchange rates.

The following table reflects goodwill allocated to each reporting segment during the nine months ended September 30, 2006 and 2005, respectively.

	Hardware Solutions			Total Company
	Electricity Metering	Meter Data Collection	Software Solutions	
	(in thousands)			
Goodwill balance, January 1, 2005	\$ 26,236	\$ 73,337	\$ 17,898	\$ 117,471
Goodwill adjustments	(1,758)	-	-	(1,758)
Effect of change in exchange rates	91	221	54	366
Goodwill balance, September 30, 2005	<u>\$ 24,569</u>	<u>\$ 73,558</u>	<u>\$ 17,952</u>	<u>\$ 116,079</u>
Goodwill balance, January 1, 2006	\$ 24,555	\$ 73,532	\$ 17,945	\$ 116,032
Goodwill acquired	-	-	3,015	3,015
Effect of change in exchange rates	161	304	74	539
Goodwill balance, September 30, 2006	<u>\$ 24,716</u>	<u>\$ 73,836</u>	<u>\$ 21,034</u>	<u>\$ 119,586</u>

Note 8: Debt

The components of our borrowings are as follows:

	At September 30, 2006	At December 31, 2005
	(in thousands)	
Senior subordinated notes	\$ 124,299	\$ 124,226
Convertible senior subordinated notes	345,000	-
Senior secured credit facility term loan	-	24,676
Real estate term note	-	14,800
Project financing debt	-	3,227
	<u>469,299</u>	<u>166,929</u>
Current portion of debt	-	(4,376)
Total long-term debt	<u>\$ 469,299</u>	<u>\$ 162,553</u>

Senior Subordinated Notes

Our senior subordinated notes (subordinated notes) consist of \$125 million aggregate principal amount of 7.75% notes, issued in May 2004 and due in 2012. The subordinated notes were discounted to a price of 99.265 to yield 7.875%, with a balance of \$124.3 million at September 30, 2006. The subordinated notes are registered with the SEC and are generally transferable. The discount on the subordinated notes is accreted and the prepaid debt fees are amortized over the life of the notes. Fixed interest payments of approximately \$4.8 million are required every six months, in May and November. The notes are subordinated to our credit facility and are guaranteed by all of our operating subsidiaries, except for our foreign subsidiaries and an outsourcing project finance subsidiary, all of which are wholly owned. The subordinated notes contain covenants, which place restrictions on the incurrence of debt, the payment of dividends, certain investments and mergers. We were in compliance with these debt covenants at September 30, 2006 and December 31, 2005. Some or all of the subordinated notes may be redeemed at our option at any time on or after May 15, 2008, at their principal amount plus a specified premium. At any time prior to May 15, 2007, we may, at our option, redeem up to 35% of the subordinated notes, at 107.75%, with the proceeds of certain sales of our common stock.

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Convertible Senior Subordinated Notes

On August 4, 2006, we issued \$345 million of 2.50% convertible senior subordinated notes (convertible notes) due August 2026. Fixed interest payments of approximately \$4.3 million are required every six months in February and August. For each six month period beginning August 2011, contingent interest payments of approximately 0.19% of the average trading price of the convertible notes will be made if certain thresholds and events are met, as outlined in the indenture, as filed with this Quarterly Report on Form 10-Q. The convertible notes are registered with the SEC and are generally transferable. The contingent interest feature represents an embedded derivative. The fair value of this embedded derivative was not significant at issuance or at September 30, 2006.

The convertible notes may be converted under the following circumstances, at the option of the holder, at an initial conversion rate of 15.3478 shares of our common stock for each \$1,000 principal amount of the convertible notes (conversion price of \$65.16 per share), as defined in the indenture:

- during any fiscal quarter commencing after September 30, 2006, if the closing sale price per share of our common stock exceeds 120% of the conversion price for at least 20 trading days in the 30 consecutive trading day period ending on the last trading day of the preceding fiscal quarter;
- between July 1, 2011 and August 1, 2011, and any time after August 1, 2024;
- during the five business days after any five consecutive trading day period in which the trading price of the convertible notes for each day was less than 98% of the conversion value of the convertible notes;
- if the convertible notes are called for redemption;
- if a fundamental change occurs; or
- upon the occurrence of defined corporate events.

The convertible notes also contain put options, which may require us, at the option of the holder, to repurchase all or a portion of the convertible notes on August 1, 2011, August 1, 2016 and August 1, 2021 at the principal amount, plus accrued and unpaid interest.

Upon conversion, the principal amount of the convertible notes will be settled in cash and, at our option, the remaining conversion obligation (stock price in excess of conversion price) may be settled in cash, shares or a combination. The conversion rate for the convertible notes is subject to adjustment upon the occurrence of certain corporate events, as defined in the indenture, to ensure that the economic rights of the convertible notes are preserved. We may redeem some or all of the convertible notes for cash, on or after August 1, 2011, for a price equal to 100% of the principal amount plus accrued and unpaid interest.

Net proceeds of approximately \$336.3 million may be used to acquire or invest in businesses, products or technologies that are complementary to our own. We may also use the proceeds for general corporate purposes. The convertible notes are unsecured and subordinate to all of our existing and future senior indebtedness. The convertible notes are currently not guaranteed by any of our operating subsidiaries. However, the convertible notes will be unconditionally guaranteed, joint and severally, by any future subsidiaries that guarantee our senior subordinated notes. The convertible notes contain covenants, which place restrictions on the incurrence of debt and certain mergers. We were in compliance with these debt covenants at September 30, 2006. The aggregate principal amount of the convertible notes is included in long-term debt as they can not be converted prior to July 2011, unless certain defined events occur. At such time the holders have the ability to convert, we will reclassify the convertible notes from long-term to current to reflect the holders' conversion rights.

Senior Secured Credit Facility

At December 31, 2005, we had \$24.7 million remaining on our original \$185 million seven-year senior secured term loan (term loan), which we repaid during the first quarter of 2006. The term loan was part of our senior secured credit facility (credit facility), which originated on July 1, 2004 to finance the acquisition of our Electricity Metering business. The credit facility also includes a \$55 million five-year senior secured revolving credit line (revolver). We have the ability to increase the revolver to \$75 million at a future date. Our letter of credit limit under the credit facility is \$55 million and can be increased to \$65 million at a future date. The credit facility is guaranteed by all of our operating subsidiaries, except for our foreign subsidiaries and an outsourcing project finance subsidiary, all of which are wholly owned.

At September 30, 2006, there were no borrowings outstanding under the revolver and \$22.9 million was utilized by outstanding standby letters of credit resulting in \$32.1 million available for additional borrowings. Revolver borrowings can

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be made at any time through June 2009, at which time any borrowings outstanding must be repaid. Our debt covenants require us to maintain certain consolidated leverage and coverage ratios on a quarterly basis, as well as customary covenants that place restrictions on the incurrence of debt, the payment of dividends, certain investments and mergers. We were in compliance these debt covenants at September 30, 2006 and December 31, 2005.

Interest rates on the revolver vary depending on our consolidated leverage ratio and are based on the London InterBank Offering Rate (LIBOR) plus 1.0% to 2.0%, or Prime plus zero to 1.5%, payable at various intervals depending on the term of the borrowing. The annual commitment fee on the unused portion of the revolver varies from 0.25% to 0.50%. We incur annual letter of credit fees based on (a) a fronting fee of 0.125% and (b) a letter of credit fee that varies from 1.0% to 2.0%.

Prepaid debt fees for all our outstanding borrowings are amortized over the respective terms using the effective interest method. Total unamortized prepaid debt fees were approximately \$13.9 million and \$8.9 million at September 30, 2006 and December 31, 2005, respectively.

Real Estate Term Note

On December 30, 2005, we signed a real estate term note (real estate note) for \$14.8 million, secured by real property, with principal payments of \$740,000, plus interest, payable quarterly, commencing April 1, 2006 and continuing through January 1, 2011. During the first quarter of 2006, we made an optional prepayment of \$10.0 million on the real estate note. During April 2006, we completed the repayment of the real estate note.

Project Financing

In May 1998, in conjunction with project financing for one of our outsourcing contracts, we issued a note secured by the assets of the project with monthly interest payments at an annual interest rate of 7.6%, maturing May 31, 2009. During April 2006, we repaid the balance of the project financing loan, which included \$107,000 in prepayment fees.

Note 9: Restructurings

In 2004, we incurred restructuring costs associated with the implementation of a new internal organizational structure, which resulted in staffing reductions and other restructuring expenses. These accrued costs were fully paid to employees by December 31, 2005. We have incurred lease termination costs in prior years. Accrued liabilities and expenses associated with these prior restructuring efforts consisted of the following, for the nine months ended September 30, 2005:

	<u>Severance and Related Costs</u>	<u>Lease Termination and Related Costs</u>
	(in thousands)	
Accrual balance at December 31, 2004	\$ 2,317	\$ 175
Addition/adjustments to accruals	390	(109)
Cash payments	(2,694)	-
Accrual balance at September 30, 2005	<u>\$ 13</u>	<u>\$ 66</u>

Liabilities for employee severance are recorded within wages and benefits payable and liabilities for lease terminations are recorded within accrued expenses. Lease termination and related costs are dependent on our ability to sublease vacant space and are reported as general and administrative expenses. The remaining \$13,000 severance related liability at September 30, 2005 was paid as of December 31, 2005. The accrued liability for lease termination and related costs was \$10,000 at September 30, 2006. There was no restructuring activity during the three and nine months ended September 30, 2006.

Note 10: Income Taxes

Our effective income tax rates differ from the federal statutory rate of 35%, and can vary from period to period, due to fluctuations in operating results, new or revised tax legislation and accounting pronouncements, research credits and state income taxes.

We estimate that our 2006 annual effective income tax rate will be approximately 42%, which excludes interim discrete events. Our effective income tax rate was 39% for the three and nine months ended September 30, 2006. The rate for the three and nine months ended September 30, 2006 is lower than the estimated annual rate due to tax benefits from certain federal, state and Canadian credits and the realization of deferred tax assets related to a foreign subsidiary. Our 2006 effective income tax rates are higher than the statutory rate due to state income taxes and the implementation of SFAS 123(R).

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Our 2005 annual effective income tax rate of 34% was lower than the statutory tax rate due to the benefit of research credits. In the second quarter of 2005, we completed a research credit study for the years 1997 through 2004, recognizing a \$5.9 million net tax credit as an offset to the provision for income taxes. Due primarily to this credit, we had a net tax benefit of approximately \$963,000 for the nine month period ended September 30, 2005. We had a provision of approximately \$3.4 million for the three month period ended September 30, 2005.

Our estimated 2006 annual effective income tax rate does not include a federal research credit, as the credit expired on December 31, 2005. Congress is currently discussing extension and/or revision of the research credit. As of September 30, 2006, the research credit had not been extended or reinstated by Congress. If a research credit is granted by Congress, our effective annual income tax rate for 2006 is expected to be lower than the current estimated rate of 42%.

Note 11: Stock-Based Compensation

Stock Option Plans

At September 30, 2006, we had three stock-based compensation plans in effect, but we are currently granting options under one. Stock options to purchase the Company's common stock are granted at the fair market value of the stock on the date of grant upon approval by our Board of Directors. Options generally become exercisable in three or four equal installments beginning a year from the date of grant and generally expire 10 years from the date of grant.

The fair value of each stock option granted is estimated on the date of grant using the Black-Scholes option-pricing model. The assumptions used to calculate the fair value of options granted are evaluated regularly to reflect market conditions and actual trends. Compensation expense is recognized only for those options expected to vest, with forfeitures estimated at the date of grant based on our historical experience and future expectations. Prior to the adoption of SFAS 123(R), the effect of forfeitures on the pro forma expense amounts was recognized as the forfeitures occurred.

The expense related to stock options recognized under SFAS 123(R) for the three and nine months ended September 30, 2006 was \$2.3 million and \$5.9 million, respectively. For the three and nine months ended September 30, 2006, we issued 548,200 and 578,200 shares with weighted average fair values of \$20.74 and \$21.00, respectively.

A summary of our stock option activity during the nine months ended September 30, 2006 is as follows:

	Shares Subject to Options	Weighted Average Exercise Price per Share	Weighted Average Remaining Contractual Life	Aggregate Intrinsic Value
	(in thousands)		(years)	(in thousands)
Outstanding, January 1, 2006	2,443	\$ 21.24		
Granted	578	49.29		
Exercised	674	17.33		
Forfeited	59	32.47		
Expired	-	-		
Outstanding, September 30, 2006	<u>2,288</u>	<u>\$ 29.19</u>	<u>7.69</u>	<u>\$ 61,096</u>
Exercisable and expected to vest, September 30, 2006	<u>2,119</u>	<u>\$ 28.11</u>	<u>7.58</u>	<u>\$ 58,858</u>
Exercisable, September 30, 2006	<u>1,059</u>	<u>\$ 17.77</u>	<u>6.17</u>	<u>\$ 40,266</u>

The aggregate intrinsic value in the table above is before applicable income taxes, based on our closing stock price of \$55.80 as of the last business day of the period ended September 30, 2006, which represents amounts that would have been received by the optionees had all options been exercised on that date. As of September 30, 2006, total unrecognized stock-based compensation expense related to nonvested stock options was approximately \$19.1 million, which is expected to be recognized over a weighted average period of approximately 27 months. During the nine months ended September 30, 2006, the total intrinsic value of stock options exercised was \$27.8 million and the total fair value of options vested was \$32.2 million.

We issue new shares of common stock upon the exercise of stock options.

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As of September 30, 2006, there were 487,509 shares of common stock available for issuance pursuant to stock-based awards. Additional information regarding options outstanding as of September 30, 2006, is as follows:

	Outstanding Options			Exercisable Options	
	Shares (in 000's)	Remaining Life (years)	Weighted Average Price	Shares (in 000's)	Weighted Average Price
Range of Exercise Prices					
\$ 4.87 - \$ 8.34	312	3.94	\$ 6.88	312	\$ 6.88
\$ 8.34 - \$20.00	210	5.96	15.36	182	14.76
\$20.00 - \$26.65	717	7.50	21.19	429	20.72
\$26.65 - \$37.40	448	8.58	37.38	135	37.35
\$37.40 - \$48.51	570	9.82	48.28	-	-
\$48.51 - \$70.99	31	9.50	62.96	1	50.29
	<u>2,288</u>	<u>7.69</u>	<u>\$ 29.19</u>	<u>1,059</u>	<u>\$ 17.77</u>

Employee Stock Purchase Plan

We are authorized to issue shares of common stock to our eligible employees who have completed three months of service, work more than 20 hours each week and are employed more than five months in any calendar year. Employees who own 5% or more of our common stock are not eligible to participate in the ESPP. Under the terms of the ESPP, eligible employees can choose payroll deductions each year of up to 10% of their regular cash compensation. Such deductions are applied toward the discounted purchase price of our common stock. The purchase price of the common stock is 85% of the fair market value of the stock at the end of each fiscal quarter. We had no unrecognized compensation cost associated with the third quarter 2006 offering of stock under this plan. Under the ESPP, we sold 33,201 and 28,667 shares to employees in the nine months ended September 30, 2006 and 2005, respectively. The expense related to ESPP recognized under SFAS 123(R) for the three and nine months ended September 30, 2006 was approximately \$95,000 and \$287,000, respectively.

Long-Term Performance Plan

We have a Long-Term Performance Plan (LTPP) for senior management with restricted stock awards contingent on the attainment of yearly goals payable in the Company's common stock with a three-year cliff vesting period. Restricted stock awards are granted in the year following attainment, as approved by our Board of Directors. The value of an award is based on a percentage of the participant's base salary and is dependent on performance objectives for the period. We currently have two active plans, one for 2005 and another for 2006.

The award for 2005 was \$1.8 million, with 30,542 shares issued on February 15, 2006, at a weighted average grant-date fair value of \$59.16. For the three and nine months ended September 30, 2006 approximately \$85,000 and \$164,000 were recognized as expense. As of September 30, 2006, total unrecognized stock-based compensation expense related to the 2005 LTPP was approximately \$747,000, which will be recognized through December 31, 2008. For the 2006 yearly goals and associated potential award, approximately \$86,000 and \$181,000 were recognized as expense for the three and nine months ended September 30, 2006. A summary of the restricted stock activity during the nine months ended September 30, 2006 is as follows:

	<u>Restricted Shares</u>
Nonvested, January 1, 2006	-
Granted	30,542
Vested	(1,171)
Forfeited	(6,938)
Nonvested, September 30, 2006	<u>22,433</u>

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Board of Directors' Unrestricted Stock Awards

We issue unrestricted stock awards to our Board of Directors as part of the Board of Directors' compensation. During the three and nine months ended September 30, 2006, we issued 2,232 and 5,628 of unrestricted stock awards to our Board of Directors, with a weighted average grant-date fair value of \$60.35 and \$50.59, respectively. The expense related to these awards for the three and nine months ended September 30, 2006 was approximately \$135,000 and \$285,000, respectively. All awards were fully vested and expensed when granted.

Note 12: Related Party Transactions

At December 31, 2005, we had a 30% equity interest in Servatron, a company that serves both as a contract manufacturer for our low volume products and as our handheld service repair depot. During February 2006, we received a dividend of \$193,000, which was recorded as a return on investment. During March 2006, we sold our equity interest back to Servatron for \$1.0 million, recognizing a loss of \$242,000. At March 31, 2006, we had no ownership in Servatron. Our Chief Executive Officer continues to serve as a board member of Servatron. We sublease a portion of our Spokane Valley facility, which is currently held for sale (Note 4), to Servatron.

During the first quarter of 2006, our Chief Financial Officer became a board member of a financial institution, which is a 3.6% participant in our \$55 million revolver.

Note 13: Commitments and Contingencies

Guarantees and Indemnifications

Under FASB Interpretation 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*, we record a liability for certain types of guarantees and indemnifications for agreements entered into or amended subsequent to December 31, 2002. No liabilities were required to be recorded for agreements entered into as of September 30, 2006 and December 31, 2005.

We maintain bid and performance bonds for certain customers. Bonds in force were \$3.0 million at September 30, 2006 and December 31, 2005. Bid bonds guarantee that we will enter into a contract consistent with the terms of the bid. Performance bonds provide a guarantee to the customer for future performance, which usually covers the installation phase of a contract and may on occasion cover the operations and maintenance phase of outsourcing contracts.

We also have standby letters of credit to guarantee our performance under certain contracts. The outstanding amounts of standby letters of credit were \$22.9 million and \$22.6 million at September 30, 2006 and December 31, 2005, respectively.

We generally provide within our sales contracts an indemnification related to the infringement of any patent, copyright, trademark or other intellectual property right on software or equipment, which indemnifies the customer from and pays the resulting costs, damages and attorney's fees awarded against a customer with respect to such a claim provided that (a) the customer promptly notifies us in writing of the claim and (b) we have the sole control of the defense and all related settlement negotiations. The terms of the indemnification normally do not limit the maximum potential future payments. We also provide an indemnification for third party claims resulting from damages caused by the negligence or willful misconduct of our employees/agents in connection with the performance of certain contracts. The terms of the indemnification generally do not limit the maximum potential payments.

Legal Matters

We are subject to various legal proceedings and claims of which the outcomes are subject to significant uncertainty. Our policy is to assess the likelihood of any adverse judgments or outcomes related to legal matters, as well as ranges of probable losses. A determination of the amount of the liability required, if any, for these contingencies is made after an analysis of each known issue in accordance with SFAS 5, *Accounting for Contingencies*, and related pronouncements. In accordance with SFAS 5, a liability is recorded when we determine that a loss is probable and the amount can be reasonably estimated. Additionally, we disclose contingencies for which a material loss is reasonably possible, but not probable. At September 30, 2006, there were no material contingencies requiring accrual or disclosure.

Note 14: Segment Information

We have two operating groups (Hardware Solutions and Software Solutions). Hardware Solutions is comprised of two segments, Electricity Metering and Meter Data Collection and Software Solutions represents a single segment. For these three segments, management has three primary measures of segment performance: revenue, gross profit (margin) and operating income. Revenues for each segment are reported according to product lines. There are no inter-segment revenues. Hardware Solutions cost of sales includes materials, direct labor, warranty expense and manufacturing overhead. Software Solutions cost of sales includes distribution and documentation costs for applications sold, along with other labor and operating costs for custom software development, project management, consulting and systems support. Hardware Solutions and Software Solutions cost of services include materials, labor and overhead. Operating expenses directly associated with each segment may include sales, marketing, product development or administrative expenses.

Corporate operating expenses, interest income, interest expense, other income (expense), amortization expense and income tax expense (benefit) are not allocated to the segments, nor included in the measure of segment profit or loss. We do not allocate assets and liabilities to our segments. Prior to January 1, 2006, Itron Electricity Metering, Inc. was a wholly owned subsidiary with separately identifiable assets and liabilities. Effective January 1, 2006, Itron Electricity Metering, Inc. merged with Itron, Inc. Approximately 50% and 60% of depreciation expense was allocated to the segments at September 30, 2006 and 2005, respectively, with the remaining portion unallocated. Unallocated depreciation increased in 2006, compared with 2005, due to the purchase of our new corporate headquarters facility at the end of 2005, which is not allocated to the segments.

We classify sales in the United States and Canada as domestic revenues. International revenues were \$12.8 million and \$10.3 million for the three months ended September 30, 2006 and 2005 and \$27.2 million and \$28.2 million for the nine months ended September 30, 2006 and 2005, respectively.

Segment Products

<u>Segment</u>	<u>Major Products</u>
<i>Hardware Solutions— Electricity Metering</i>	Residential, commercial and industrial (C&I) and generation, transmission and distribution (GT&D) electricity meters and related installation, implementation and other services.
<i>Hardware Solutions— Meter Data Collection</i>	Residential and commercial AMR standalone modules, OEM (original equipment manufacturer) equipment, contract manufacturing and royalties for our AMR technology in other vendors' electricity meters, mobile and network AMR data collection technologies, handheld computers for meter data collection or mobile workforce applications and related installation, implementation and maintenance support services.
<i>Software Solutions</i>	Software applications for commercial, industrial and residential meter data collection and management, distribution system design and optimization, energy and water management, asset optimization, mobile workforce solutions, forecasting and related implementation, consulting and maintenance support services.

Segment Information

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2006	2005	2006	2005
	(in thousands)			
Revenues				
Hardware Solutions				
Electricity Metering	\$ 81,575	\$ 58,598	\$ 250,420	\$ 173,326
Meter Data Collection	69,437	70,638	191,298	182,506
Total Hardware Solutions	151,012	129,236	441,718	355,832
Software Solutions	13,694	11,909	42,351	36,906
Total Company	\$ 164,706	\$ 141,145	\$ 484,069	\$ 392,738
Gross profit				
Hardware Solutions				
Electricity Metering	\$ 31,466	\$ 24,236	\$ 100,392	\$ 73,223
Meter Data Collection	30,965	32,080	85,132	80,412
Total Hardware Solutions	62,431	56,316	185,524	153,635
Software Solutions	4,994	4,714	17,707	15,132
Total Company	\$ 67,425	\$ 61,030	\$ 203,231	\$ 168,767
Operating income (loss)				
Hardware Solutions				
Electricity Metering	\$ 27,296	\$ 20,178	\$ 89,070	\$ 60,504
Meter Data Collection	24,881	26,656	67,672	64,601
Other unallocated costs	(9,736)	(5,938)	(28,169)	(18,143)
Total Hardware Solutions	42,441	40,896	128,573	106,962
Software Solutions	(3,874)	(2,996)	(9,698)	(8,570)
Corporate unallocated	(22,691)	(23,722)	(66,351)	(68,130)
Total Company	15,876	14,178	52,524	30,262
Total other income (expense)	(748)	(4,794)	(9,046)	(15,093)
Income before income taxes	\$ 15,128	\$ 9,384	\$ 43,478	\$ 15,169

Revenues from AMR related to electricity meters can be reflected in either our Electricity Metering or Meter Data Collection segments. Standalone electric AMR module shipments, reflected in Meter Data Collection, have declined in 2006 due to a planned transition to AMR embedded in our electricity meters, resulting in a shift in sales to our Electricity Metering segment.

One customer accounted for 11% and 18% of total Company revenues, and 23% and 34% of Electricity Metering segment revenues, for the three and nine months ended September 30, 2006, respectively.

One customer accounted for 13% of Meter Data Collection segment revenues for both the three and nine month periods ended September 30, 2006. No customer represented more than 10% of Meter Data Collection segment revenues for the three and nine months ended September 30, 2005.

One customer accounted for 10% of Software Solutions segment revenues for the three months ended September 30, 2006. No customer represented more than 10% of Software Solutions revenues for the nine months ended September 30, 2006 or for the three and nine months ended September 30, 2005.

One customer accounted for approximately 13% of Electricity Metering revenues and 6% of total Company revenues for the third quarter of 2005. No customer represented more than 10% of total Company or Electricity Metering revenues for the nine months ended September 30, 2005.

Note 15: Other Comprehensive Income

Other comprehensive income adjustments are reflected as an increase (decrease) to shareholders' equity and are not reflected in the results of operations. Operating results adjusted to reflect other comprehensive income items during the period, net of tax, were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2006	2005	2006	2005
	(in thousands)			
Net income	\$ 9,215	\$ 6,002	\$ 26,488	\$ 16,132
Change in foreign currency translation adjustments, net of tax	89	559	770	97
Total other comprehensive income	<u>\$ 9,304</u>	<u>\$ 6,561</u>	<u>\$ 27,258</u>	<u>\$ 16,229</u>

Accumulated other comprehensive income, net of tax, was approximately \$1.6 million and \$871,000 at September 30, 2006 and December 31, 2005, respectively, and consisted of the adjustments for foreign currency translation as indicated above.

Note 16: Consolidating Financial Information

The credit facility and the senior subordinated notes are guaranteed by all of our operating subsidiaries, except for our foreign subsidiaries and an outsourcing project finance subsidiary, all of which are wholly owned. The guarantees are joint and several, full, complete and unconditional. The convertible notes issued in August 2006 are currently not guaranteed by any of our operating subsidiaries. The convertible notes will be unconditionally guaranteed, joint and severally, by any future subsidiaries that guarantee our senior subordinated notes. There are currently no restrictions on the ability of the subsidiary guarantors to transfer funds to the parent company. The following consolidating financial information has been prepared and presented pursuant to SEC Regulation S-X Rule 3-10, "Financial Statements of Guarantors and Issuers of Guaranteed Securities Registered or Being Registered."

During the second quarter of 2006, we acquired Quantum and ELO. Commencing on the date of each acquisition, Quantum is reflected within parent and ELO is reflected within the non-guarantor subsidiaries (see Note 5).

In addition, we have four wholly owned domestic guarantor subsidiaries, which were established for various business purposes. These subsidiaries are considered minor and are included within the parent as of and for the periods ended September 30, 2006 and December 31, 2005.

Effective January 1, 2006, the legal entity holding the U.S. operations of our Electricity Metering business (a guarantor subsidiary) was merged into the parent company. As a result of this merger, the assets, liabilities and operations of this guarantor subsidiary have been combined with the parent company as of and for the three and nine month periods ended September 30, 2006. In addition, as a result of our legal entity merger on January 1, 2006, we have restated the parent and guarantor subsidiary information for the 2005 periods presented to reflect the new legal entity structure.

Condensed Consolidating Statement of Operations
Three Months Ended September 30, 2006

	<u>Parent</u>	<u>Combined Non-guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
		(in thousands)		
Revenues				
Sales	\$ 143,494	\$ 13,416	\$ (4,887)	\$ 152,023
Service	13,373	1,793	(2,483)	12,683
Total revenues	<u>156,867</u>	<u>15,209</u>	<u>(7,370)</u>	<u>164,706</u>
Cost of revenues				
Sales	86,853	8,356	(4,890)	90,319
Service	6,226	3,009	(2,273)	6,962
Total cost of revenues	<u>93,079</u>	<u>11,365</u>	<u>(7,163)</u>	<u>97,281</u>
Gross profit	63,788	3,844	(207)	67,425
Operating expenses				
Sales and marketing	13,640	1,536	-	15,176
Product development	14,983	849	(206)	15,626
General and administrative	11,519	944	-	12,463
Amortization of intangible assets	7,741	543	-	8,284
Total operating expenses	<u>47,883</u>	<u>3,872</u>	<u>(206)</u>	<u>51,549</u>
Operating income (loss)	15,905	(28)	(1)	15,876
Other income (expense)				
Interest income	3,560	29	(122)	3,467
Interest expense	(3,961)	(190)	123	(4,028)
Other income (expense), net	(154)	(33)	-	(187)
Total other income (expense)	<u>(555)</u>	<u>(194)</u>	<u>1</u>	<u>(748)</u>
Income (loss) before income taxes	15,350	(222)	-	15,128
Income tax (provision) benefit	(6,125)	212	-	(5,913)
Equity in losses of non-guarantor subsidiaries	(10)	-	10	-
Net income (loss)	<u>\$ 9,215</u>	<u>\$ (10)</u>	<u>\$ 10</u>	<u>\$ 9,215</u>

Condensed Consolidating Statement of Operations
Three Months Ended September 30, 2005

	<u>Parent</u>	<u>Combined Non-guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
		(in thousands)		
Revenues				
Sales	\$ 125,343	\$ 9,342	\$ (6,002)	\$ 128,683
Service	11,713	1,790	(1,041)	12,462
Total revenues	<u>137,056</u>	<u>11,132</u>	<u>(7,043)</u>	<u>141,145</u>
Cost of revenues				
Sales	72,236	6,823	(5,880)	73,179
Service	6,436	1,245	(745)	6,936
Total cost of revenues	<u>78,672</u>	<u>8,068</u>	<u>(6,625)</u>	<u>80,115</u>
Gross profit	58,384	3,064	(418)	61,030
Operating expenses				
Sales and marketing	12,124	1,559	5	13,688
Product development	11,729	517	(439)	11,807
General and administrative	11,168	477	-	11,645
Amortization of intangible assets	9,712	-	-	9,712
Total operating expenses	<u>44,733</u>	<u>2,553</u>	<u>(434)</u>	<u>46,852</u>
Operating income	13,651	511	16	14,178
Other income (expense)				
Interest income	276	98	(305)	69
Interest expense	(4,349)	(284)	305	(4,328)
Other income (expense), net	(332)	(187)	(16)	(535)
Total other income (expense)	<u>(4,405)</u>	<u>(373)</u>	<u>(16)</u>	<u>(4,794)</u>
Income before income taxes	9,246	138	-	9,384
Income tax provision	(3,150)	(232)	-	(3,382)
Equity in losses of non-guarantor subsidiaries	(94)	-	94	-
Net income (loss)	<u>\$ 6,002</u>	<u>\$ (94)</u>	<u>\$ 94</u>	<u>\$ 6,002</u>

Condensed Consolidating Statement of Operations
Nine Months Ended September 30, 2006

	<u>Parent</u>	<u>Combined Non-guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
		(in thousands)		
Revenues				
Sales	\$ 423,415	\$ 38,202	\$ (14,683)	\$ 446,934
Service	42,484	7,124	(12,473)	37,135
Total revenues	<u>465,899</u>	<u>45,326</u>	<u>(27,156)</u>	<u>484,069</u>
Cost of revenues				
Sales	253,085	21,909	(14,715)	260,279
Service	18,678	13,936	(12,055)	20,559
Total cost of revenues	<u>271,763</u>	<u>35,845</u>	<u>(26,770)</u>	<u>280,838</u>
Gross profit	194,136	9,481	(386)	203,231
Operating expenses				
Sales and marketing	42,555	4,423	-	46,978
Product development	42,863	1,097	(544)	43,416
General and administrative	34,741	2,204	159	37,104
Amortization of intangible assets	22,458	751	-	23,209
Total operating expenses	<u>142,617</u>	<u>8,475</u>	<u>(385)</u>	<u>150,707</u>
Operating income	51,519	1,006	(1)	52,524
Other income (expense)				
Interest income	4,268	123	(202)	4,189
Interest expense	(12,061)	(501)	203	(12,359)
Other income (expense), net	(830)	(46)	-	(876)
Total other income (expense)	<u>(8,623)</u>	<u>(424)</u>	<u>1</u>	<u>(9,046)</u>
Income before income taxes	42,896	582	-	43,478
Income tax (provision) benefit	(17,633)	643	-	(16,990)
Equity in earnings of non-guarantor subsidiaries	1,225	-	(1,225)	-
Net income	<u>\$ 26,488</u>	<u>\$ 1,225</u>	<u>\$ (1,225)</u>	<u>\$ 26,488</u>

Condensed Consolidating Statement of Operations
Nine Months Ended September 30, 2005

	<u>Parent</u>	<u>Combined Non-guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
		(in thousands)		
Revenues				
Sales	\$ 355,935	\$ 29,676	\$ (29,915)	\$ 355,696
Service	34,040	5,733	(2,731)	37,042
Total revenues	<u>389,975</u>	<u>35,409</u>	<u>(32,646)</u>	<u>392,738</u>
Cost of revenues				
Sales	210,124	23,088	(30,024)	203,188
Service	18,770	3,194	(1,181)	20,783
Total cost of revenues	<u>228,894</u>	<u>26,282</u>	<u>(31,205)</u>	<u>223,971</u>
Gross profit	161,081	9,127	(1,441)	168,767
Operating expenses				
Sales and marketing	36,500	3,951	5	40,456
Product development	34,975	1,622	(1,462)	35,135
General and administrative	32,061	1,320	-	33,381
Amortization of intangible assets	29,143	-	-	29,143
Restructurings	197	193	-	390
Total operating expenses	<u>132,876</u>	<u>7,086</u>	<u>(1,457)</u>	<u>138,505</u>
Operating income	28,205	2,041	16	30,262
Other income (expense)				
Interest income	774	104	(711)	167
Interest expense	(15,146)	(845)	711	(15,280)
Other income (expense), net	119	(83)	(16)	20
Total other income (expense)	<u>(14,253)</u>	<u>(824)</u>	<u>(16)</u>	<u>(15,093)</u>
Income before income taxes	13,952	1,217	-	15,169
Income tax (provision) benefit	1,504	(541)	-	963
Equity in earnings of non-guarantor subsidiaries	676	-	(676)	-
Net income	<u>\$ 16,132</u>	<u>\$ 676</u>	<u>\$ (676)</u>	<u>\$ 16,132</u>

Condensed Consolidating Balance Sheet
September 30, 2006

	<u>Parent</u>	<u>Combined Non-guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
		(in thousands)		
ASSETS				
Current assets				
Cash and cash equivalents	\$ 224,275	\$ 10,246	\$ -	\$ 234,521
Short-term investments, held to maturity	171,733	-	-	171,733
Accounts receivable, net	84,233	12,800	-	97,033
Intercompany accounts receivable	8,696	6,242	(14,938)	-
Inventories	55,953	3,000	-	58,953
Deferred income taxes, net	21,619	836	-	22,455
Other	21,260	1,787	-	23,047
Intercompany other	2,382	3,500	(5,882)	-
Total current assets	<u>590,151</u>	<u>38,411</u>	<u>(20,820)</u>	<u>607,742</u>
Property, plant and equipment, net	79,505	4,314	-	83,819
Intangible assets, net	101,805	8,132	-	109,937
Goodwill	106,320	13,266	-	119,586
Deferred income taxes, net	45,133	2,432	(790)	46,775
Intercompany notes receivable	6,587	1,298	(7,885)	-
Other	45,859	1,089	(29,787)	17,161
Total assets	<u>\$ 975,360</u>	<u>\$ 68,942</u>	<u>\$ (59,282)</u>	<u>\$ 985,020</u>
LIABILITIES AND SHAREHOLDERS' EQUITY				
Current liabilities				
Accounts payable and accrued expenses	\$ 48,402	\$ 4,264	\$ -	\$ 52,666
Intercompany accounts payable	6,244	8,694	(14,938)	-
Wages and benefits payable	23,264	1,538	-	24,802
Current portion of warranty	8,471	670	-	9,141
Short-term intercompany advances	3,500	2,382	(5,882)	-
Unearned revenue	26,340	1,265	-	27,605
Total current liabilities	<u>116,221</u>	<u>18,813</u>	<u>(20,820)</u>	<u>114,214</u>
Long-term debt	469,299	-	-	469,299
Intercompany notes payable	1,297	6,588	(7,885)	-
Warranty	9,463	-	-	9,463
Contingent purchase price	5,686	-	-	5,686
Other obligations	1,339	7,659	(790)	8,208
Total liabilities	<u>603,305</u>	<u>33,060</u>	<u>(29,495)</u>	<u>606,870</u>
Shareholders' equity				
Preferred stock	-	-	-	-
Common stock	345,404	29,765	(29,765)	345,404
Accumulated other comprehensive income (loss), net	(4,454)	6,095	-	1,641
Retained earnings	31,105	22	(22)	31,105
Total shareholders' equity	<u>372,055</u>	<u>35,882</u>	<u>(29,787)</u>	<u>378,150</u>
Total liabilities and shareholders' equity	<u>\$ 975,360</u>	<u>\$ 68,942</u>	<u>\$ (59,282)</u>	<u>\$ 985,020</u>

Condensed Consolidating Balance Sheet
December 31, 2005

	<u>Parent</u>	<u>Combined Non-guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
		(in thousands)		
ASSETS				
Current assets				
Cash and cash equivalents	\$ 28,064	\$ 5,574	\$ -	\$ 33,638
Accounts receivable, net	96,707	7,721	-	104,428
Intercompany accounts receivable	3,460	8,977	(12,437)	-
Inventories	46,792	2,664	-	49,456
Deferred income taxes, net	22,895	299	-	23,194
Other	8,575	2,366	-	10,941
Intercompany other	227	3,500	(3,727)	-
Total current assets	<u>206,720</u>	<u>31,101</u>	<u>(16,164)</u>	<u>221,657</u>
Property, plant and equipment, net	74,097	3,526	-	77,623
Intangible assets, net	123,233	60	-	123,293
Goodwill	103,305	12,727	-	116,032
Deferred income taxes, net	47,987	1,806	(838)	48,955
Intercompany notes receivable	1,966	-	(1,966)	-
Other	38,200	48	(26,924)	11,324
Total assets	<u>\$ 595,508</u>	<u>\$ 49,268</u>	<u>\$ (45,892)</u>	<u>\$ 598,884</u>
LIABILITIES AND SHAREHOLDERS' EQUITY				
Current liabilities				
Accounts payable and accrued expenses	\$ 44,720	\$ 1,495	\$ -	\$ 46,215
Intercompany accounts payable	8,966	3,471	(12,437)	-
Wages and benefits payable	22,761	971	-	23,732
Current portion of debt	3,516	860	-	4,376
Current portion of warranty	7,972	525	-	8,497
Short-term intercompany advances	-	3,727	(3,727)	-
Unearned revenue	21,801	957	-	22,758
Total current liabilities	<u>109,736</u>	<u>12,006</u>	<u>(16,164)</u>	<u>105,578</u>
Long-term debt	160,186	-	-	160,186
Project financing debt	-	2,367	-	2,367
Intercompany notes payable	-	1,966	(1,966)	-
Warranty	6,708	71	-	6,779
Deferred income taxes, net	-	838	(838)	-
Other obligations	6,333	107	-	6,440
Total liabilities	<u>282,963</u>	<u>17,355</u>	<u>(18,968)</u>	<u>281,350</u>
Shareholders' equity				
Preferred stock	-	-	-	-
Common stock	312,047	28,132	(28,133)	312,046
Accumulated other comprehensive income (loss), net	(4,119)	4,962	28	871
Retained earnings (accumulated deficit)	4,617	(1,181)	1,181	4,617
Total shareholders' equity	<u>312,545</u>	<u>31,913</u>	<u>(26,924)</u>	<u>317,534</u>
Total liabilities and shareholders' equity	<u>\$ 595,508</u>	<u>\$ 49,268</u>	<u>\$ (45,892)</u>	<u>\$ 598,884</u>

Condensed Consolidating Statement of Cash Flows
Nine Months Ended September 30, 2006

	<u>Parent</u>	<u>Combined Non-guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
		(in thousands)		
Operating activities				
Net income	\$ 26,488	\$ 1,225	\$ (1,225)	\$ 26,488
Adjustments to reconcile net income to net cash provided by operating activities:				
Depreciation and amortization	32,952	1,314	-	34,266
Employee stock plans income tax benefits	12,686	-	-	12,686
Excess tax benefits from stock-based compensation	(9,108)	-	-	(9,108)
Stock-based compensation	6,811	-	-	6,811
Amortization of prepaid debt fees	3,718	48	-	3,766
Deferred income taxes, net	3,965	(1,181)	-	2,784
Equity in earnings (losses) of non-guarantor subsidiaries	(1,225)	-	1,225	-
Other, net	(1,190)	(18)	-	(1,208)
Changes in operating assets and liabilities, net of acquisitions:				
Accounts receivable	14,337	(4,921)	-	9,416
Inventories	(9,161)	612	-	(8,549)
Long-term note receivable, net	1,298	(1,298)	-	-
Accounts payable and accrued expenses	3,499	123	-	3,622
Wages and benefits payable	926	162	-	1,088
Unearned revenue	5,468	290	-	5,758
Warranty	3,254	74	-	3,328
Other long-term obligations	(237)	-	-	(237)
Intercompany transactions, net	(7,958)	7,958	-	-
Other, net	(4,230)	307	-	(3,923)
Net cash provided by operating activities	<u>82,293</u>	<u>4,695</u>	<u>-</u>	<u>86,988</u>
Investing activities				
Purchases of investments held to maturity	(170,434)	-	-	(170,434)
Acquisitions of property, plant and equipment	(25,220)	(658)	-	(25,878)
Business acquisitions, net	(5,932)	(1,389)	-	(7,321)
Cash transferred to parent	-	(1,295)	1,295	-
Cash transferred to non-guarantor subsidiaries	(500)	-	500	-
Intercompany notes, net	(4,622)	-	4,622	-
Other, net	83	1,424	-	1,507
Net cash used in investing activities	<u>(206,625)</u>	<u>(1,918)</u>	<u>6,417</u>	<u>(202,126)</u>
Financing activities				
Proceeds from borrowings	345,000	-	-	345,000
Payments on debt	(39,476)	(3,227)	-	(42,703)
Issuance of common stock	13,375	-	-	13,375
Excess tax benefits from stock-based compensation	9,108	-	-	9,108
Prepaid debt fees	(8,759)	-	-	(8,759)
Cash transferred from parent	-	500	(500)	-
Cash transferred from non-guarantor subsidiaries	1,295	-	(1,295)	-
Intercompany notes payable	-	4,622	(4,622)	-
Net cash provided by financing activities	<u>320,543</u>	<u>1,895</u>	<u>(6,417)</u>	<u>316,021</u>
Increase in cash and cash equivalents	196,211	4,672	-	200,883
Cash and cash equivalents at beginning of period	<u>28,064</u>	<u>5,574</u>	<u>-</u>	<u>33,638</u>
Cash and cash equivalents at end of period	<u>\$ 224,275</u>	<u>\$ 10,246</u>	<u>\$ -</u>	<u>\$ 234,521</u>
Non-cash operating and investing transactions:				
Property, plant and equipment purchased but not yet paid	\$ 2,950	\$ 502	\$ -	\$ 3,452
Non-cash affects of acquisitions	-	637	-	637
Supplemental disclosure of cash flow information:				
Cash paid during the period for:				
Income taxes	\$ 2,936	\$ 279	\$ -	\$ 3,215
Interest	5,488	250	-	5,738

Condensed Consolidating Statement of Cash Flows
Nine Months Ended September 30, 2005

	Parent	Combined Non-guarantor Subsidiaries	Eliminations	Consolidated
		(in thousands)		
Operating activities				
Net income	\$ 16,132	\$ 676	\$ (676)	\$ 16,132
Adjustments to reconcile net income to net cash provided by operating activities:				
Depreciation and amortization	38,183	602	-	38,785
Employee stock plans income tax benefits	14,399	-	-	14,399
Stock-based compensation	399	-	-	399
Amortization of prepaid debt fees	4,330	-	-	4,330
Deferred income taxes, net	(16,572)	259	-	(16,313)
Equity in earnings (losses) of guarantor and non-guarantor subsidiaries	(676)	-	676	-
Other, net	1,726	(192)	-	1,534
Changes in operating assets and liabilities, net of acquisitions:				
Accounts receivable	(4,963)	225	-	(4,738)
Inventories	(4,231)	(968)	-	(5,199)
Accounts payable and accrued expenses	1,042	(682)	-	360
Wages and benefits payable	7,751	(339)	-	7,412
Unearned revenue	(3,212)	127	-	(3,085)
Warranty	(52)	(142)	-	(194)
Other long-term obligations	(436)	-	-	(436)
Intercompany transactions, net	(3,595)	3,595	-	-
Other, net	(3,774)	(58)	-	(3,832)
Net cash provided by operating activities	46,451	3,103	-	49,554
Investing activities				
Acquisitions of property, plant and equipment	(10,127)	(137)	-	(10,264)
Cash transferred to parent	-	(2,500)	2,500	-
Cash transferred to non-guarantor subsidiaries	154	-	(154)	-
Intercompany notes, net	4,870	-	(4,870)	-
Other, net	(1,893)	2,259	1,414	1,780
Net cash used in investing activities	(6,996)	(378)	(1,110)	(8,484)
Financing activities				
Payments on debt	(122,111)	(593)	-	(122,704)
Issuance of common stock	82,269	1,414	(1,414)	82,269
Prepaid debt fees	(391)	-	-	(391)
Intercompany notes, net	-	(4,870)	4,870	-
Cash received from non-guarantor subsidiaries	2,500	-	(2,500)	-
Cash received from parent	-	(154)	154	-
Other, net	-	28	-	28
Net cash used in financing activities	(37,733)	(4,175)	1,110	(40,798)
Increase (decrease) in cash and cash equivalents	1,722	(1,450)	-	272
Cash and cash equivalents at beginning of period	5,854	5,770	-	11,624
Cash and cash equivalents at end of period	\$ 7,576	\$ 4,320	\$ -	\$ 11,896
<i>Supplemental disclosure of cash flow information:</i>				
Cash paid during the period for:				
Income taxes	\$ 1,267	\$ 269	\$ -	\$ 1,536
Interest	8,771	215	-	8,986

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

In this Quarterly Report on Form 10-Q, the terms "we," "us," "our," "Itron" and the "Company" refer to Itron, Inc.

The following discussion and analysis should be read in conjunction with the unaudited condensed consolidated financial statements and notes included in this report, and with our Annual Report on Form 10-K filed with the Securities and Exchange Commission (SEC) on February 24, 2006.

Our SEC filings are available free of charge under the Investors section of our website at www.itron.com as soon as practicable after they are filed with or furnished to the SEC. In addition, our filings are available at the SEC's website (www.sec.gov) and at the SEC's Headquarters at 100 F Street, NE, Washington, DC 20549, or by calling 1-800-SEC-0330.

Certain Forward-Looking Statements

This document contains forward-looking statements concerning our operations, financial performance, revenues, earnings growth, estimated stock-based compensation expense, the impact of new accounting pronouncements and other items. These statements reflect our current plans and expectations and are based on information currently available as of the date of this Quarterly Report on Form 10-Q. When included in this discussion, the words "expects," "intends," "anticipates," "believes," "plans," "projects," "estimates," "future," "objective," "may," "will," "will continue" and similar expressions are intended to identify forward-looking statements. However, these words are not the exclusive means of identifying such statements. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances are forward-looking statements. The forward-looking statements rely on a number of assumptions and estimates, which could be inaccurate, and which are subject to risks and uncertainties that could cause our actual results to vary materially from those anticipated. Such risks and uncertainties include, among others, 1) the rate and timing of customer demand for our products, 2) delays, rescheduling or cancellations of current customer orders, 3) changes in estimated liabilities for product warranties, 4) changes in laws and regulations (including Federal Communications Commission (FCC) licensing actions), 5) our dependence on new product development and intellectual property, 6) future acquisitions, including potential disruptions in operations associated with integration activities and performance expectations and 7) other factors. You should not place undue reliance on these forward-looking statements, which apply only as of the date of this Quarterly Report on Form 10-Q. We do not have any obligation or undertaking to update publicly or revise any forward-looking statement contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based. For a more complete description of these and other risks, see "Risk Factors" within Item 1A included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2005, which was filed with the SEC on February 24, 2006.

Results of Operations

We derive the majority of our revenues from sales of products and services to utilities. Sales revenues may include hardware, software licenses, custom software development, field and project management services and engineering, consulting and installation services. Service revenues include post-sale maintenance support and outsourcing services. Outsourcing services include installation, operation and maintenance of meter reading systems to provide meter information to a customer for billing and management purposes for systems we own as well as those owned by our customers. Hardware cost of sales includes materials, direct labor, warranty expense and manufacturing overhead. Software cost of sales includes distribution and documentation costs for applications sold, along with other labor and operating costs for custom software development, project management, consulting and systems support. Hardware and software cost of services include materials, labor and overhead.

Highlights

We delivered approximately 6.9 million automatic meter reading (AMR) endpoints (electricity meters and standalone modules) in the first nine months of 2006. This was a 37% increase over the number of endpoints delivered in the first nine months of 2005. Total backlog was \$325 million at September 30, 2006, which is the same as the total backlog at September 30, 2005. September 30, 2005 backlog included \$118 million for Progress Energy, compared with only \$14 million remaining at September 30, 2006. Current backlog remains at all time high levels, but is more diversified than last year.

Operating margins during the three and nine month periods ended September 30, 2006 improved compared with the same periods last year because revenue grew more than operating expenses and intangible asset amortization expense declined. Operating cash flows were \$37.4 million higher in the first nine months of 2006, as compared with the same period in 2005, with the majority of cash flow used to pay down bank debt.

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In August 2006, we issued \$345 million of 2.50% convertible senior subordinated notes (convertible notes) with the intent to use the proceeds to acquire or invest in businesses complementary to our own. The proceeds are invested in cash equivalent and short-term investment instruments.

On January 1, 2006, we adopted Statement of Financial Accounting Standards 123(R), *Share-Based Payment*, (SFAS 123(R)), which requires the measurement and recognition of compensation expense for all stock-based payment awards. We recognized \$2.7 million and \$6.8 million in stock-based compensation expense for the three and nine months ended September 30, 2006, respectively, compared with \$179,000 and \$399,000 for the same periods in 2005. The primary increase in stock-based compensation expense is due to the expensing of stock awards, which commenced on January 1, 2006 under SFAS 123(R).

Revenues and Gross Margins

Total Revenues and Gross Margins

The following tables summarize our revenues, gross profit and gross margin for the three and nine months ended September 30, 2006 and 2005.

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2006	2005	% Change	2006	2005	% Change
	(in millions)			(in millions)		
<i>Revenues</i>						
Sales	\$ 152.0	\$ 128.7	18%	\$ 446.9	\$ 355.7	26%
Service	12.7	12.4	2%	37.2	37.0	1%
Total revenues	<u>\$ 164.7</u>	<u>\$ 141.1</u>	17%	<u>\$ 484.1</u>	<u>\$ 392.7</u>	23%

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2006		2005		2006		2005	
	<i>Gross Profit</i>	<i>Gross Margin</i>	<i>Gross Profit</i>	<i>Gross Margin</i>	<i>Gross Profit</i>	<i>Gross Margin</i>	<i>Gross Profit</i>	<i>Gross Margin</i>
	(in millions)		(in millions)		(in millions)		(in millions)	
<i>Gross Profit and Margin</i>								
Sales	\$ 61.7	41%	\$ 55.6	43%	\$ 186.6	42%	\$ 152.6	43%
Service	5.7	45%	5.5	44%	16.6	45%	16.2	44%
Total gross profit and margin	<u>\$ 67.4</u>	41%	<u>\$ 61.1</u>	43%	<u>\$ 203.2</u>	42%	<u>\$ 168.8</u>	43%

Revenues

Sales revenues increased \$23.3 million and \$91.2 million for the three and nine months ended September 30, 2006, compared with the same periods in 2005, as a result of increased sales of electricity meters, AMR gas modules and installation services.

One customer, Progress Energy, represented 11% and 18% of total revenues for the three and nine months ended September 30, 2006, respectively. No customer represented more than 10% of total revenues for the three and nine months ended September 30, 2005. The 10 largest customers accounted for approximately 38% and 40% of total revenues during the three and nine months ended September 30, 2006. During the same periods in 2005, our 10 largest customers accounted for approximately 31% and 22%, respectively.

Gross Margins

As a percentage of revenue, sales gross margin for the three and nine months ended September 30, 2006 was slightly lower, compared with the same periods in 2005, due to a shift in product mix, including a higher portion of installation services.

Segment Revenues, Gross Profit and Margin and Operating Income (Loss)

We have two operating groups (Hardware Solutions and Software Solutions). Hardware Solutions is comprised of two segments, Electricity Metering and Meter Data Collection and Software Solutions represents a single segment. For these three segments, management has three primary measures of segment performance: revenue, gross profit (margin) and operating income. Revenues for each segment are reported according to product lines. There are no inter-segment revenues. Hardware Solutions cost of sales includes materials, direct labor, warranty expense and manufacturing overhead. Software

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Solutions cost of sales includes distribution and documentation costs for applications sold, along with other labor and operating costs for custom software development, project management, consulting and systems support. Hardware Solutions and Software Solutions cost of services include materials, labor and overhead. Operating expenses directly associated with each segment may include sales, marketing, product development or administrative expenses.

Corporate operating expenses, interest income, interest expense, other income (expense), amortization expense and income tax expense (benefit) are not allocated to the segments, nor included in the measure of segment profit or loss. We do not allocate assets and liabilities to our segments. Prior to January 1, 2006, Itron Electricity Metering, Inc. was a wholly owned subsidiary with separately identifiable assets and liabilities. Effective January 1, 2006, Itron Electricity Metering, Inc. merged with Itron, Inc. Approximately 50% and 60% of depreciation expense was allocated to the segments at September 30, 2006 and 2005, respectively, with the remaining portion unallocated. Unallocated depreciation increased in 2006, compared with 2005, due to the purchase of our new corporate headquarters facility at the end of 2005, which is not allocated to the segments.

We classify sales in the United States and Canada as domestic revenues. International revenues were \$12.8 million and \$10.3 million for the three months ended September 30, 2006 and 2005 and \$27.2 million and \$28.2 million for the nine months ended September 30, 2006 and 2005, respectively.

Segment Products

Segment	Major Products
<i>Hardware Solutions— Electricity Metering</i>	Residential, commercial and industrial (C&I) and generation, transmission and distribution (GT&D) electricity meters and related installation, implementation and other services.
<i>Hardware Solutions— Meter Data Collection</i>	Residential and commercial AMR standalone modules, OEM (original equipment manufacturer) equipment, contract manufacturing and royalties for our AMR technology in other vendors' electricity meters, mobile and network AMR data collection technologies, handheld computers for meter data collection or mobile workforce applications and related installation, implementation and maintenance support services.
<i>Software Solutions</i>	Software applications for commercial, industrial and residential meter data collection and management, distribution system design and optimization, energy and water management, asset optimization, mobile workforce solutions, forecasting and related implementation, consulting and maintenance support services.

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The following tables and discussion highlight significant changes in trends or components of each segment.

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2006	2005	% Change	2006	2005	% Change
	(millions)			(millions)		
Segment Revenues						
Hardware Solutions						
Electricity Metering	\$ 81.6	\$ 58.6	39%	\$ 250.4	\$ 173.3	44%
Meter Data Collection	69.4	70.6	-2%	191.3	182.5	5%
Total Hardware Solutions	151.0	129.2	17%	441.7	355.8	24%
Software Solutions	13.7	11.9	15%	42.4	36.9	15%
Total Company	\$ 164.7	\$ 141.1	17%	\$ 484.1	\$ 392.7	23%

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2006		2005		2006		2005	
	Gross Profit	Gross Margin	Gross Profit	Gross Margin	Gross Profit	Gross Margin	Gross Profit	Gross Margin
	(millions)		(millions)		(millions)		(millions)	
Segment Gross Profit and Margin								
Hardware Solutions								
Electricity Metering	\$ 31.5	39%	\$ 24.2	41%	\$ 100.4	40%	\$ 73.2	42%
Meter Data Collection	30.9	45%	32.1	45%	85.1	44%	80.4	44%
Total Hardware Solutions	62.4	41%	56.3	44%	185.5	42%	153.6	43%
Software Solutions	5.0	36%	4.8	40%	17.7	42%	15.2	41%
Total Company	\$ 67.4	41%	\$ 61.1	43%	\$ 203.2	42%	\$ 168.8	43%

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2006		2005		2006		2005	
	Operating Income (Loss)	Operating Margin	Operating Income (Loss)	Operating Margin	Operating Income (Loss)	Operating Margin	Operating Income (Loss)	Operating Margin
	(millions)		(millions)		(millions)		(millions)	
Segment Operating Income (Loss) and Operating Margin								
Hardware Solutions								
Electricity Metering	\$ 27.3	33%	\$ 20.2	34%	\$ 89.1	36%	\$ 60.5	35%
Meter Data Collection	24.9	36%	26.6	38%	67.6	35%	64.6	35%
Other unallocated costs	(9.7)		(5.9)		(28.1)		(18.1)	
Total Hardware Solutions	42.5	28%	40.9	32%	128.6	29%	107.0	30%
Software Solutions	(3.9)	-28%	(3.0)	-25%	(9.7)	-23%	(8.6)	-23%
Corporate unallocated	(22.7)		(23.7)		(66.4)		(68.1)	
Total Company	\$ 15.9	10%	\$ 14.2	10%	\$ 52.5	11%	\$ 30.3	8%

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<i>Unit Shipments by Segment</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2006	2005	2006	2005
	(in thousands)			
Electricity Metering				
Total meters	1,575	1,175	5,175	3,375
With Itron AMR	850	575	3,325	1,375
With other AMR	325	150	700	575
Meter Data Collection				
AMR standalone modules	1,150	1,175	3,225	3,075
Licensed AMR (other vendors' meters)	125	250	300	550
Total units with Itron AMR ⁽¹⁾	2,125	2,000	6,850	5,000

⁽¹⁾ Includes Itron meters with Itron AMR, other vendors' electronic electricity meters with Itron AMR and Itron AMR standalone modules.

Hardware Solutions—Electricity Metering: Electricity Metering revenues increased \$23.0 million and \$77.1 million for the three and nine months ended September 30, 2006, compared with the same periods in 2005, due to a 34% and 53% increase in the number of meters shipped in each period, respectively. The growth in meter shipments in 2006 was primarily related to shipments of 1.9 million residential meters with AMR under a contract with Progress Energy. This contract for a total of 2.7 million meters commenced in the fourth quarter of 2005 and is expected to be substantially complete by the end of 2006. Meters equipped with our AMR technology were 54% and 64% of total meter shipments for the three and nine months ended September 30, 2006, respectively, compared with 49% and 41% for the same periods in the prior year.

Electricity Metering gross margin was 39% for the third quarter of 2006, compared with 41% in 2005. Year-to-date, Electricity Metering gross margin was 40% in 2006 compared with 42% in 2005. Gross margin fluctuations from period to period reflect changes in the mix of meters sold, such as residential vs. C&I, AMR meters vs. non-AMR meters, changes in manufacturing volumes and changes in the amount of installation and other related services. For the three and nine months ended September 30, 2006, lower gross margins primarily resulted from a higher proportion of installation revenues and the commencement of manufacturing operations in Campinas, Brazil where plant capacity is not yet fully utilized.

Progress Energy represented 23% and 34% of Electricity Metering revenues for the three and nine month periods ended September 30, 2006. Another customer represented 13% of Electricity Metering revenues in the third quarter of 2005. There were no customers that represented more than 10% of Electricity Metering revenues for the nine months ended September 30, 2005.

Hardware Solutions—Meter Data Collection: Meter Data Collection revenues decreased \$1.2 million, or 2%, in the third quarter of 2006, compared with the same period in 2005. Shipments of standalone gas AMR modules increased while shipments of standalone electric AMR modules declined. Meter Data Collection revenues increased \$8.8 million, or 5%, for the nine months ended September 30, 2006, compared with the same period in 2005, due to increased shipments of standalone gas AMR modules, offset partially by fewer shipments of standalone electric AMR modules. Standalone electric AMR module shipments have declined in 2006 due to a planned transition to AMR embedded in our electricity meters. This has resulted in a shift in sales to our Electricity Metering segment.

Gross margins remained constant at 45% and 44% for the three and nine month periods ending September 30, 2006, respectively, compared with the same periods in 2005. Gross margins can fluctuate from period to period primarily due to changes in the mix of product sold, manufacturing volumes and provisions for product warranties.

One customer accounted for 13% of Meter Data Collection segment revenues for both the three and nine month periods ended September 30, 2006. There were no customers that represented more than 10% of Meter Data Collection revenues for the three and nine months ended September 30, 2005.

Hardware Solutions—Total operating expenses: Total Hardware Solutions operating expenses were \$19.9 million and \$56.9 million for the three and nine months ended September 30, 2006, compared with \$15.4 million and \$46.6 million for the same periods in 2005, respectively. Although as a percentage of revenue these costs have remained relatively constant, research and development costs have increased as a result of our advanced metering infrastructure (AMI) development.

Software Solutions: Revenues increased \$1.8 million and \$5.5 million for the three and nine months ended September 30, 2006, compared with the same periods in 2005, due to increases in software license sales for a broad mix of products. Gross margin for the three months ended September 30, 2006 decreased four percentage points, compared with the same period in

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2005, due to integration efforts with the Quantum acquisition and the timing of projects. Gross margin for the first nine months of 2006 increased one percentage point, compared with the same period in 2005, due to a proportionately higher content of revenues from software licenses. Software licenses were 28% and 27% of segment revenues for the three and nine months ended September 30, 2006, respectively, compared with 25% and 22% in each of the same periods in 2005.

One customer accounted for 10% of Software Solutions segment revenues for the three months ended September 30, 2006. No customer represented more than 10% of Software Solutions revenues for the nine months ended September 30, 2006 and the three and nine months ended September 30, 2005.

Gross profit for Software Solutions is not yet sufficient to cover current operating expenses due primarily to significant investments in product development. In 2006, operating expenses included approximately \$800,000 in expenses related to the relocation of operations from Vancouver, B.C. to our headquarters in Spokane and approximately \$1.3 million associated with stock-based compensation. Stock-based compensation was approximately \$480,000 for the three months ended September 30, 2006. There was no stock-based compensation expense in 2005.

Corporate unallocated: Operating expenses not directly associated with a segment are classified as "Corporate unallocated." The largest single component of these is amortization of intangible assets, which was \$8.3 million and \$23.2 million in the three and nine months ended September 30, 2006, respectively, compared with \$9.7 million and \$29.1 million for the same periods in 2005.

New Order Bookings and Backlog

Bookings for a reported period represent contracts and purchase orders received during the specified period. Total backlog represents committed but undelivered contracts and purchase orders at period end. Twelve-month backlog represents the portion of total backlog that we estimate will be earned over the next twelve months. Bookings and backlog exclude maintenance-related activity. Backlog is not a complete measure of our future business as we have a significant portion of our business that is book-and-ship. Bookings and backlog can fluctuate significantly due to the timing of large project awards. In addition, annual or multi-year contracts are subject to rescheduling and cancellation by customers due to the long-term nature of the contracts. Beginning total backlog, plus bookings, less sales revenues will not always equal ending total backlog due to miscellaneous contract adjustments and other factors.

Information on new orders during the quarter and backlog at quarter-end is summarized as follows:

<u>Quarter Ended</u>	<u>Total Bookings</u>	<u>Total Backlog</u> (in millions)	<u>12-Month Backlog</u>
September 30, 2006	\$ 128	\$ 325	\$ 194
June 30, 2006	107	351	225
March 31, 2006	206	387	241
December 31, 2005	149	324	188
September 30, 2005	212	325	198
June 30, 2005	177	243	151
March 31, 2005	117	190	116
December 31, 2004	128	179	97

Total backlog was \$325 million at September 30, 2006, which is the same as the total backlog at September 30, 2005. September 30, 2005 backlog included \$118 million for Progress Energy, compared with only \$14 million remaining at September 30, 2006. Twelve month backlog, which represents the portion of backlog that will be earned over the next twelve months, was \$194 million at September 30, 2006, compared with \$198 million one year ago. Twelve-month backlog at September 30, 2005 included \$77 million related to the contract with Progress Energy, compared with only \$14 million remaining at September 30, 2006. Current backlog remains at all time high levels, but is more diversified than last year.

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Operating Expenses

The following table details our total operating expenses in dollars and as a percentage of revenues.

	Three Months Ended September 30,				Nine Months Ended September 30,			
	% of		% of		% of		% of	
	2006	Revenue	2005	Revenue	2006	Revenue	2005	Revenue
	(millions)		(millions)		(millions)	(millions)		(millions)
<i>Operating Expenses</i>								
Sales and marketing	\$ 15.2	9%	\$ 13.7	10%	\$ 47.0	10%	\$ 40.5	10%
Product development	15.6	9%	11.8	8%	43.4	9%	35.1	9%
General and administrative	12.4	8%	11.6	8%	37.1	8%	33.4	9%
Amortization of intangibles assets	8.3	5%	9.7	7%	23.2	4%	29.1	7%
Restructurings	-	-	-	-	-	-	0.4	-
Total operating expenses	\$ 51.5	31%	\$ 46.8	33%	\$ 150.7	31%	\$ 138.5	35%

For the three and nine months ended September 30, 2006, total operating expenses included approximately \$2.3 million and \$5.9 million associated with our January 1, 2006 adoption of SFAS 123(R), which requires expensing of stock-based compensation. Product development increased \$3.8 million and \$8.3 million for the three and nine months ended September 30, 2006, compared with the same periods in 2005. While total operating expenses increased, they decreased as a percentage of revenue due to higher sales volumes.

Other Income (Expense)

The following table shows the components of other income (expense).

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2006	2005	2006	2005
	(in thousands)			
Interest income	\$ 3,467	\$ 69	\$ 4,189	\$ 167
Interest expense	(3,417)	(3,046)	(8,593)	(10,950)
Amortization of prepaid debt fees	(611)	(1,282)	(3,766)	(4,330)
Other income (expense), net	(187)	(535)	(876)	20
Total other income (expense)	\$ (748)	\$ (4,794)	\$ (9,046)	\$ (15,093)

With the issuance of our \$345 million in convertible notes in August 2006, we placed the net proceeds into cash equivalents and short-term investments. As a result, our average cash balances increased to \$169.3 million and \$84.3 million for the three and nine month periods ended September 30, 2006, compared with \$10.4 million and \$13.4 million for the same periods in 2005, respectively.

The reduction in interest expense for the nine months ended September 30, 2006 was the result of lower average outstanding borrowings and capitalized interest. The increase in interest expense for the third quarter of 2006, compared with the third quarter of 2005, was the result of accrued interest on our \$345 million 2.50% convertible senior subordinated notes issued on August 4, 2006. Average outstanding borrowings were \$341.8 million and \$207.8 million for the three and nine months ended September 30, 2006, compared with \$163.2 million and \$216.3 million for the same periods in 2005, respectively. We capitalized interest expense of approximately \$500,000 and \$900,000 for the three and nine month periods ended September 30, 2006, respectively, related to qualified expenditures for improvements to our new corporate headquarters facility, which was substantially complete at September 30, 2006. The amount capitalized is based on interest rates in place during the construction period. Amortization of prepaid debt fees has fluctuated as a result of voluntary prepayments of our senior secured term loan.

Other income (expense) consists primarily of foreign currency gains and losses, which can vary from period to period, as well as other non-operating events or transactions. During the nine months ended September 30, 2006, other income (expense) also included a \$242,000 loss on the sale of our investment in Servatron, which was recorded in the first quarter.

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Income Taxes

Our effective income tax rates differ from the federal statutory rate of 35%, and can vary from period to period, due to fluctuations in operating results, new or revised tax legislation and accounting pronouncements, research credits and state income taxes.

We estimate that our 2006 annual effective income tax rate will be approximately 42%, which excludes interim discrete events. Our effective income tax rate was 39% for the three and nine months ended September 30, 2006. The rate for the three and nine months ended September 30, 2006 is lower than the estimated annual rate due to tax benefits for certain federal, state and Canadian credits and the realization of deferred tax assets related to a foreign subsidiary. Our estimated 2006 effective income tax rates are higher than the statutory rate due to state income taxes and the implementation of SFAS 123(R).

Our 2005 annual effective income tax rate of 34% was lower than the statutory tax rate due to the benefit of research credits. In the second quarter of 2005, we completed a research credit study for the years 1997 through 2004, recognizing a \$5.9 million net tax credit as an offset to the provision for income taxes. Due primarily to this credit, we had a net tax benefit of approximately \$963,000 for the nine month period ended September 30, 2005. We had a provision of approximately \$3.4 million for the three month period ended September 30, 2005.

Our estimated 2006 annual effective income tax rate does not include a federal research credit, as the credit expired on December 31, 2005. Congress is currently discussing extension and/or revision of the research credit. As of September 30, 2006, the research credit had not been extended or reinstated by Congress. If a research credit is granted by Congress, our effective annual income tax rate for 2006 is expected to be lower than the current estimated rate of 42%.

As a matter of course, we are subject to audit by various taxing authorities. From time to time, these audits may result in proposed assessments where the ultimate resolution may result in additional taxes. We regularly assess our position with regard to individual tax exposures and we believe that our tax positions comply with applicable tax law and that we have adequately provided for these matters.

Financial Condition

Cash Flow Information:

	Nine Months Ended September 30,	
	2006	2005
	(in millions)	
Operating activities	\$ 87.0	\$ 49.6
Investing activities	(202.1)	(8.5)
Financing activities	316.0	(40.8)
Increase in cash and cash equivalents	<u>\$ 200.9</u>	<u>\$ 0.3</u>

The increase in cash and cash equivalents was the result of our \$345 million convertible notes issued in August 2006, the proceeds of which were placed in cash equivalents and short-term investments with the intent to invest in businesses, products or technologies that are complementary to our own.

Operating activities: Cash provided by operating activities increased \$37.4 million in the first nine months of 2006, compared with the same period in 2005. Increased revenues generated an additional \$114.3 million in cash, which was offset by an increase of \$73.4 million in cash paid to suppliers and employees. In addition, we paid \$5.6 million less in net interest and taxes. In 2006, \$9.1 million in excess tax benefits from stock-based compensation associated with our January 1, 2006 adoption of SFAS 123(R) is reflected in financing activities.

Investing activities: In the third quarter of 2006, we invested \$170.4 million in short-term investments held to maturity from the net proceeds of our \$345 million convertible notes issuance. The remaining proceeds were placed in cash equivalents. In the first nine months of 2006, property, plant and equipment purchases were \$25.9 million, compared with \$10.3 million in the first nine months of 2005. The increase in 2006 was primarily related to capital improvements to our new corporate headquarters and an ERP (Enterprise Resource Planning) system upgrade. Also, in 2005, proceeds of \$2.6 million were received from the sale of our manufacturing facility in Quebec, Canada. Investing activities in the first nine months of 2006 also included \$7.3 million used for the Quantum Consulting, Inc. (Quantum) and ELO Sistemas e Tecnologia Ltda. (ELO) acquisitions with no similar activity in the first nine months of 2005.

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Financing activities: In the third quarter of 2006, we received \$345.0 million gross proceeds from our convertible notes issuance. During the first nine months of 2006, we paid off various debt balances from December 31, 2005, including \$24.7 million on our term loan, \$14.8 million on our real estate term note and \$3.2 million of project financing debt. In the first nine months of 2005 we made \$122.7 million in payments on borrowings, \$59.8 million of which were from net proceeds from an equity offering in May 2005. Cash generated from the exercise of stock-based awards was \$13.4 million during the first nine months of 2006, compared with \$22.5 million for the same period in 2005. Financing activities in the first nine months of 2006 included \$9.1 million in excess tax benefits from stock-based compensation associated with our January 1, 2006 adoption of SFAS 123(R). Financing activities during the first nine months of 2006 also included \$8.8 million in prepaid debt fees, the majority of which was associated with the convertible notes issuance.

We had no off-balance sheet financing agreements at September 30, 2006 and December 31, 2005, except for operating lease commitments.

Liquidity, Sources and Uses of Capital:

We have historically funded our operations and growth with cash flow from operations, borrowings and issuances of our stock. During the three months ended September 30, 2006, our cash and cash equivalents increased significantly as a result of the net proceeds of our \$345 million convertible notes issued in August 2006.

We issued \$345 million of 2.50% convertible senior subordinated notes (convertible notes) in August 2006, which are due August 2026. Fixed interest payments of approximately \$4.3 million are required every six months in February and August. For each six month period beginning August 2011, contingent interest payments of approximately 0.19% of the average trading price of the convertible notes will be made if certain thresholds and events are met, as outlined in the indenture, as filed with this Quarterly Report on Form 10-Q. The convertible notes are registered with the SEC and are generally transferable.

The convertible notes may be converted under the following circumstances, at the option of the holder, at an initial conversion rate of 15.3478 shares of our common stock for each \$1,000 principal amount of the convertible notes (conversion price of \$65.16 per share), as defined in the indenture:

- during any fiscal quarter commencing after September 30, 2006, if the closing sale price per share of our common stock exceeds 120% of the conversion price for at least 20 trading days in the 30 consecutive trading day period ending on the last trading day of the preceding fiscal quarter;
- between July 1, 2011 and August 1, 2011, and any time after August 1, 2024;
- during the five business days after any five consecutive trading day period in which the trading price of the convertible notes for each day was less than 98% of the conversion value of the convertible notes;
- if the convertible notes are called for redemption;
- if a fundamental change occurs; or
- upon the occurrence of defined corporate events.

The convertible notes also contain put options, which may require us, at the option of the holder, to repurchase all or a portion of the convertible notes on August 1, 2011, August 1, 2016 and August 1, 2021 at the principal amount, plus accrued and unpaid interest.

Upon conversion, the principal amount of the convertible notes will be settled in cash and, at our option, the remaining conversion obligation (stock price in excess of conversion price) may be settled in cash, shares or a combination. The conversion rate for the convertible notes is subject to adjustment upon the occurrence of certain corporate events, as defined in the indenture, to ensure that the economic rights of the convertible notes are preserved. We may redeem some or all of the convertible notes for cash, on or after August 1, 2011, for a price equal to 100% of the principal amount plus accrued and unpaid interest.

The convertible notes are unsecured and subordinate to all of our existing and future senior indebtedness. The convertible notes are currently not guaranteed by any of our operating subsidiaries. However, the convertible notes will be unconditionally guaranteed, joint and severally, by any future subsidiaries that guarantee our senior subordinated notes. The convertible notes contain covenants, which place restrictions on the incurrence of debt and certain mergers. We were in compliance with these debt covenants at September 30, 2006. The aggregate principal amount of the convertible notes is

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included in long-term debt as they can not be converted prior to July 2011, unless certain defined events occur. At such time the holders have the ability to convert, we will reclassify the convertible notes from long-term to current to reflect the holders' conversion rights.

Our senior subordinated notes (subordinated notes) consist of \$125 million aggregate principal amount of 7.75% notes, issued in May 2004 and due in 2012. The subordinated notes were discounted to a price of 99.265 to yield 7.875%, with a balance of \$124.3 million at September 30, 2006. The subordinated notes are registered with the SEC and are generally transferable. The discount on the subordinated notes is accreted and the prepaid debt fees are amortized over the life of the notes. Fixed interest payments of approximately \$4.8 million are required every six months, in May and November. The notes are subordinated to our credit facility and are guaranteed by all of our operating subsidiaries, except for our foreign subsidiaries and an outsourcing project finance subsidiary, all of which are wholly owned. The subordinated notes contain covenants, which place restrictions on the incurrence of debt, the payment of dividends, certain investments and mergers. We were in compliance with these debt covenants at September 30, 2006 and December 31, 2005. Some or all of the subordinated notes may be redeemed at our option at any time on or after May 15, 2008, at their principal amount plus a specified premium. At any time prior to May 15, 2007, we may, at our option, redeem up to 35% of the subordinated notes, at 107.75%, with the proceeds of certain sales of our common stock.

At December 31, 2005, we had \$24.7 million remaining on our original \$185 million seven-year senior secured term loan (term loan), which we repaid during the first quarter of 2006. The term loan was part of our senior secured credit facility (credit facility), which originated on July 1, 2004 to finance the acquisition of our Electricity Metering business. The credit facility also includes a \$55 million five-year senior secured revolving credit line (revolver). We have the ability to increase the revolver to \$75 million at a future date. Our letter of credit limit under the credit facility is \$55 million and can be increased to \$65 million at a future date. The credit facility is guaranteed by all of our operating subsidiaries, except for our foreign subsidiaries and an outsourcing project finance subsidiary, all of which are wholly owned.

At September 30, 2006, there were no borrowings outstanding under the revolver and \$22.9 million was utilized by outstanding standby letters of credit resulting in \$32.1 million available for additional borrowings. Revolver borrowings can be made at any time through June 2009, at which time any borrowings outstanding must be repaid. Our debt covenants require us to maintain certain consolidated leverage and coverage ratios on a quarterly basis, as well as customary covenants that place restrictions on the incurrence of debt, the payment of dividends, certain investments and mergers. We were in compliance with these debt covenants at September 30, 2006 and December 31, 2005.

Interest rates on the revolver vary depending on our consolidated leverage ratio and are based on the London InterBank Offering Rate (LIBOR) plus 1.0% to 2.0%, or Prime plus zero to 1.5%, payable at various intervals depending on the term of the borrowing. The annual commitment fee on the unused portion of the revolver varies from 0.25% to 0.50%. We incur annual letter of credit fees based on (a) a fronting fee of 0.125% and (b) a letter of credit fee that varies from 1.0% to 2.0%.

Prepaid debt fees for all our outstanding borrowings are amortized over the respective terms using the effective interest method. Total unamortized prepaid debt fees were approximately \$13.9 million and \$8.9 million at September 30, 2006 and December 31, 2005, respectively.

The real estate term note we signed on December 31, 2005 for \$14.8 million was repaid in April 2006. The project financing note, which had a balance of \$3.2 million at December 31, 2005, was repaid in April 2006.

We maintain bid and performance bonds for certain customers. Bonds in force were \$3.0 million at September 30, 2006 and December 31, 2005. Bid bonds guarantee that we will enter into a contract consistent with the terms of the bid. Performance bonds provide a guarantee to the customer for future performance, which usually covers the installation phase of a contract and may on occasion cover the operations and maintenance phase of outsourcing contracts.

We have employee bonus and profit sharing plans, based primarily on financial targets. Actual award amounts are determined at the end of the year if the targets are met. As the bonuses are being earned during the year, we estimate a compensation accrual each quarter based on the progress towards achieving the goals, the estimated financial forecast for the year and the probability of achieving various results. An accrual is recorded if management deems it probable that a target will be achieved and the amount can be reasonably estimated. Although we monitor our annual forecast and the progress towards achievement of goals, the actual results at the end of the year may warrant a bonus award that is significantly greater or less than the assessments made in earlier quarters. We accrued approximately \$2.9 million and \$2.8 million under these plans for the three months ended September 30, 2006 and 2005 and \$7.9 million and \$6.7 million for the nine months ended September 30, 2006 and 2005, respectively.

Our net deferred tax assets consist of accumulated net operating losses and tax credits, some of which are limited by Internal Revenue Code Sections 382 and 383 (Section 382 and Section 383). The limited deferred tax assets resulted primarily from

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acquisitions. We expect to utilize tax loss carryforwards and available tax credits to offset taxes otherwise due on regular taxable income in upcoming years. During 2006, we expect to pay approximately \$2.1 million in cash for federal alternative minimum tax, international taxes and various state tax obligations.

Working capital, which includes current assets less current liabilities, was \$493.5 million at September 30, 2006, compared with \$116.1 million at December 31, 2005. A substantial portion of the \$377.4 million increase in working capital resulted from the proceeds of our \$345 million convertible notes issued in August 2006 and the \$8.6 million reclassification of our Spokane Valley headquarters' facility to assets held for sale within other current assets.

We expect to continue to expand our operations and grow our business through a combination of internal new product development, licensing technology from or to others, distribution agreements, partnership arrangements and acquisitions of technology or other companies. We expect these activities to be funded with existing cash, cash flow from operations, borrowings and the issuance of common stock or other securities. We believe existing sources of liquidity will be sufficient to fund our existing operations and obligations for at least the next year and foreseeable future, but offer no assurances. Our liquidity could be affected by the stability of the energy and water industries, competitive pressures, international risks, intellectual property claims and other factors described under "Risk Factors" within Item 1A to Part 1 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2005, which was filed with the SEC on February 24, 2006, as well as in our "Quantitative and Qualitative Disclosures About Market Risk" within Item 3 of Part 1 included in this Quarterly Report on Form 10-Q.

Contingencies

We are subject to various legal proceedings and claims of which the outcomes are subject to significant uncertainty. Our policy is to assess the likelihood of any adverse judgments or outcomes related to legal matters, as well as ranges of probable losses. A determination of the amount of the liability required, if any, for these contingencies is made after an analysis of each known issue in accordance with SFAS 5, *Accounting for Contingencies*, and related pronouncements. In accordance with SFAS 5, a liability is recorded when we determine that a loss is probable and the amount can be reasonably estimated. Additionally, we disclose contingencies for which a material loss is reasonably possible, but not probable. At September 30, 2006, there were no material contingencies requiring accrual or disclosure.

We generally provide within our sales contracts an indemnification related to the infringement of any patent, copyright, trademark or other intellectual property right on software or equipment, which indemnifies the customer from and pays the resulting costs, damages and attorney's fees awarded against a customer with respect to such a claim provided that (a) the customer promptly notifies us in writing of the claim and (b) we have the sole control of the defense and all related settlement negotiations. The terms of the indemnification normally do not limit the maximum potential future payments. We also provide an indemnification for third party claims resulting from damages caused by the negligence or willful misconduct of our employees/agents in connection with the performance of certain contracts. The terms of the indemnification generally do not limit the maximum potential payments.

Critical Accounting Policies

Revenue Recognition: The majority of our revenues are recognized when products are shipped to or received by a customer or when services are provided. We have certain customer arrangements with multiple elements. For such arrangements, we determine the estimated fair value of each element and then allocate the total arrangement consideration among the separate elements based on the relative fair value percentages. Revenues for each element are then recognized based on the type of element, such as 1) when the products are shipped, 2) services are delivered, 3) percentage of completion when implementation services are essential to the software performance, 4) upon customer acceptance provisions or 5) transfer of title. Fair values represent the estimated price charged when an item is sold separately. We review our fair values on an annual basis or more frequently if a significant trend is noted.

We recognize revenue for delivered elements when the delivered elements have standalone value and we have objective and reliable evidence of fair value for each undelivered element. In the absence of fair value of a delivered element, we allocate revenue first to the fair value of the undelivered elements and the residual revenue to the delivered elements. If the fair value of any undelivered element included in a multiple element arrangement can not be objectively determined, revenue is deferred until all elements are delivered and services have been performed, or until fair value can objectively be determined for any remaining undelivered elements.

Under outsourcing arrangements, revenue is recognized as services are provided. Hardware and software post-sale maintenance support fees are recognized ratably over the performance period. Certain consulting services are recognized as services are performed. Revenue can vary significantly from period to period based on the timing of orders and the application of revenue recognition criteria. Use of the percentage of completion method for revenue recognition requires

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estimating the cost to complete a project. The estimation of costs through completion of a project is subject to many variables such as the length of time to complete, changes in wages, subcontractor performance, supplier information and business volume assumptions. Changes in underlying assumptions/estimates may adversely or positively affect financial performance.

Unearned revenue is recorded for products or services when the criteria for revenue recognition have not been met. The majority of unearned revenue relates to annual billing terms for post-sale maintenance and support agreements.

Warranty: We offer industry standard warranties on our hardware products and large application software products. Standard warranty accruals represent the estimated cost of projected warranty claims and are based on historical and projected product performance trends, business volume assumptions, supplier information and other business and economic projections. Thorough testing of new products in the development stage helps identify and correct potential warranty issues prior to manufacturing. Continuing quality control efforts during manufacturing limit our exposure to warranty claims. If our quality control efforts fail to detect a fault in one of our products, we could experience an increase in warranty claims. We track warranty claims to identify potential warranty trends. If an unusual trend is noted, an additional warranty accrual may be assessed and recorded when a failure event is probable and the cost can be reasonably estimated. Management continually evaluates the sufficiency of the warranty provisions and makes adjustments when necessary. The warranty allowances may fluctuate due to changes in estimates for material, labor and other costs we may incur to replace projected product failures, and we may incur additional warranty and related expenses in the future with respect to new or established products.

Inventories: Items are removed from inventory using the first-in, first-out method. Inventories include raw materials, sub-assemblies and finished goods. Inventory amounts include the cost to manufacture the item, such as the cost of raw materials, labor and other applied direct and indirect costs. We also review idle facility expense, freight, handling costs and wasted materials to determine if abnormal amounts should be recognized as current-period charges. We review our inventory for obsolescence and marketability. If the estimated market value, which is based upon assumptions about future demand and market conditions, falls below the original cost, the inventory value is reduced to the market value. If technology rapidly changes or actual market conditions are less favorable than those projected by management, inventory write-downs may be required.

Goodwill and Intangible Assets: Goodwill and intangible assets result from our acquisitions. We use estimates in determining the value of goodwill and intangible assets, including estimates of useful lives of intangible assets, discounted future cash flows and fair values of the related operations. We test goodwill for impairment each year as of October 1, under the guidance of SFAS 142, *Goodwill and Other Intangible Assets*. We forecast discounted future cash flows at the reporting unit level, which consists of our segments, based on estimated future revenues and operating costs, which take into consideration factors such as existing backlog, expected future orders, supplier contracts and general market conditions. Changes in our forecasts or cost of capital may result in asset value adjustments, which could have a significant effect on our current and future results of operations, financial condition and cash flows. Intangible assets with a finite life are amortized based on estimated discounted cash flows over estimated useful lives and are tested for impairment when events or changes in circumstances indicate the carrying value may not be recoverable.

Stock-based Compensation: As of January 1, 2006, we adopted SFAS 123(R), which requires us to measure compensation cost for stock-based awards at fair value and recognize compensation over the service period for awards expected to vest. The estimation of stock awards that will ultimately vest requires us to approximate the number of options that will be forfeited prior to completing their vesting requirement (forfeitures). We consider many factors when estimating expected forfeitures, including types of awards, employee class and historical experience. To the extent actual results or updated estimates differ from our current estimates, such amounts will be recorded as a cumulative adjustment in the period estimates are revised. We use the Black-Scholes option-pricing model, which requires the input of assumptions, including the estimated length of time employees will retain their vested stock options before exercising them (expected term) and the estimated volatility of the Company's common stock price over the expected term.

Deferred Income Taxes: We estimate the expected realizable value of deferred tax assets. As of September 30, 2006, we have a valuation allowance of \$1.1 million to reduce our deferred tax assets relating to certain net operating losses and federal tax credits as we believe it is more likely than not that these assets will not be realized. We do not have a valuation allowance on any other deferred tax asset because we believe that the assets are more likely than not to be realized. While we have considered future taxable income and ongoing prudent and feasible tax planning strategies in assessing the appropriateness of a valuation allowance, in the event we were to determine that we would have a change in the realization of the net deferred tax asset in the future, an adjustment to the deferred tax asset or valuation allowance would be made.

Compensation Plans: We have compensation plans that offer a range of award amounts for the achievement of various annual performance and financial targets. Actual award amounts will be determined at the end of the year if the performance and financial targets are met. As the bonuses are being earned during the year, we must estimate a compensation accrual each quarter based on the progress towards achieving the goals, the estimated financial forecast for the year and the probability of

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achieving various results. An accrual is recorded if management deems it probable that a target will be achieved and the amount can be reasonably estimated. Although we monitor our annual forecast and the progress towards achievement of goals, the actual results at the end of the year may warrant a bonus award that is significantly greater or less than the assessments made in earlier quarters.

Legal Contingencies: We are subject to various legal proceedings and claims of which the outcomes are subject to significant uncertainty. Our policy is to assess the likelihood of any adverse judgments or outcomes related to legal matters, as well as ranges of probable losses. A determination of the amount of the liability required, if any, for these contingencies is made after an analysis of each known issue in accordance with SFAS 5, and related pronouncements. In accordance with SFAS 5, a liability is recorded when we determine that a loss is probable and the amount can be reasonably estimated. Additionally, we disclose contingencies for which a material loss is reasonably possible, but less than probable.

New Accounting Pronouncements

In July 2006, the Financial Accounting Standards Board (FASB) issued Financial Interpretation 48 (FIN 48), *Accounting for Uncertainty in Income Taxes—an interpretation of FASB 109*, which clarifies the accounting for uncertainty in income taxes recognized in a company's financial statements and is effective for fiscal years beginning after December 15, 2006. We are currently evaluating the impact of the adoption of FIN 48 on our financial statements.

In September 2006, the FASB issued SFAS 157, *Fair Value Instruments* (SFAS 157), which defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007, on a prospective basis. We are currently evaluating the impact of the adoption of SFAS 157 on our financial statements.

In September 2006, the SEC released Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements*, (SAB 108), which provides the staff's views regarding the process of quantifying financial statement misstatements, such as assessing both the carryover and reversing effects of prior year misstatements on the current year financial statements. SAB 108 is effective for years ending after November 15, 2006. We are currently evaluating the impact of the adoption of SAB 108 on our financial statements.

Item 3: Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk: We had no outstanding debt subject to variable interest rates at September 30, 2006. We held no material derivative instruments at September 30, 2006.

Foreign Currency Exchange Rate Risk: We conduct business in a number of foreign countries and, therefore, face exposure to adverse movements in foreign currency exchange rates. International revenues were 8% and 6% of total revenues for the three and nine months ended September 30, 2006, respectively. Since we have not used derivative instruments to manage foreign currency exchange rate risks, the consolidated results of operations in U.S. dollars are subject to fluctuation as foreign exchange rates change. In addition, our foreign currency exchange rate exposures may change over time as business practices evolve and could have a material effect on our financial results.

Our primary exposure is related to non-U.S. dollar denominated sales, cost of sales and operating expenses in our foreign subsidiary operations. This means we are subject to changes in the consolidated results of operations expressed in U.S. dollars. Where sales from the United States are not denominated in U.S. dollars, we may hedge our foreign exchange risk by selling the expected foreign currency receipts forward. There have been, and there may continue to be, large period-to-period fluctuations in the relative portions of international revenues that are denominated in foreign currencies.

Risk-sensitive financial instruments in the form of intercompany trade receivables are mostly denominated in U.S. dollars, while intercompany notes may be denominated in local foreign currencies. As foreign currency exchange rates change, intercompany trade receivables may affect current earnings, while intercompany notes may be revalued and result in unrealized translation gains or losses that are reported in accumulated other comprehensive income (loss).

Because our earnings are affected by fluctuations in the value of the U.S. dollar against foreign currencies, we have performed a sensitivity analysis assuming a hypothetical 10% increase or decrease in the value of the dollar relative to the currencies in which our transactions are denominated. At September 30, 2006, the analysis indicated that such market movements would not have had a material effect on our consolidated results of operations or on the fair value of any risk-sensitive financial instruments. The model assumes foreign currency exchange rates will shift in the same direction and relative amount. However, exchange rates rarely move in the same direction. This assumption may result in the overstatement or understatement of the effect of changing exchange rates on assets and liabilities denominated in a foreign currency. Consequently, the actual effects on operations in the future may differ materially from results of the analysis for the nine months ended September 30, 2006. We may, in the future, experience greater fluctuations in U.S. dollar earnings from fluctuations in foreign currency exchange rates. We will continue to monitor and assess the effect of currency fluctuations and may institute hedging alternatives.

Item 4: Controls and Procedures

- (a) *Evaluation of disclosure controls and procedures.* An evaluation was performed under the supervision and with the participation of our Company's management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Company's disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e), under the Securities Exchange Act of 1934 as amended. Based on that evaluation, the Company's management, including the Chief Executive Officer and Chief Financial Officer, concluded that the Company's disclosure controls and procedures were effective as of September 30, 2006, the end of the period covered by this report.
- (b) *Changes in internal control.* There have been no changes in internal control over financial reporting during the quarter ended September 30, 2006 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II: OTHER INFORMATION

Item 1: Legal Proceedings

We are subject to various legal proceedings and claims of which the outcomes are subject to significant uncertainty. Our policy is to assess the likelihood of any adverse judgments or outcomes related to legal matters, as well as ranges of probable losses. A determination of the amount of the liability required, if any, for these contingencies is made after an analysis of each known issue in accordance with Statement of Financial Accounting Standards (SFAS) 5, *Accounting for Contingencies*. In accordance with SFAS 5, a liability is recorded when we determine that a loss is probable and the amount can be reasonably estimated. Additionally, we disclose contingencies for which a material loss is reasonably possible, but less than probable. At September 30, 2006, there were no material contingencies requiring accrual or disclosure.

Item 1A: Risk Factors

There were no material changes during the third quarter of 2006 from risk factors as previously disclosed in Item 1A included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2005, which was filed with the SEC on February 24, 2006.

Item 4: Submission of Matters to a Vote of Security Holders

No matters were submitted to a vote of shareholders of Itron during the third quarter of 2006.

Item 5: Other Information

(a) No information was required to be disclosed in a report on Form 8-K during the third quarter of 2006 that was not reported.

(b) Not applicable.

Item 6: Exhibits

Exhibit Number	Description of Exhibits
4.16	Indenture related to Itron, Inc.'s 2.50% convertible senior subordinated notes due 2026, dated August 4, 2006.
10.4	Amended and Restated Equity Grant Program for Nonemployee Directors under the Itron, Inc. 2000 Amended and Restated Stock Incentive Plan.
12.1	Statement re Computation of Ratios.
31.1	Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

SIGNATURE

Pursuant to the requirements of Section 13 or 15 (d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Liberty Lake, State of Washington, on the 6th day of November, 2006.

ITRON, INC.

By: _____ /s/ STEVEN M. HELMBRECHT

Steven M. Helmbrecht
Sr. Vice President and Chief Financial Officer

ITRON, INC.

and

DEUTSCHE BANK TRUST COMPANY AMERICAS,

as Trustee

INDENTURE

Dated as of August 4, 2006

\$300,000,000 Principal Amount

2.50% CONVERTIBLE SENIOR SUBORDINATED NOTES DUE 2026

CROSS-REFERENCE TABLE

<u>TIA Section</u>	<u>Indenture Section</u>
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	N.A.
(b)	7.08; 7.10; 14.02
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	14.03
(c)	14.03
313(a)	7.06
(b)(1)	N.A.
(b)(2)	7.06
(c)	7.06; 14.02
(d)	7.06
314(a)	4.03
(b)	N.A.
(c)(1)	14.04
(c)(2)	14.04
(c)(3)	N.A.
(d)	N.A.
(e)	14.05
(f)	N.A.
315(a)	7.01(B)
(b)	7.05; 14.02
(c)	7.01(A)
(d)	7.01(C)
(e)	6.11
316(a) (last sentence)	2.09
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
(c)	N.A.
317(a)(1)	6.08
(a)(2)	6.09
(b)	2.04
318(a)	14.01

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INDENTURE, dated as of August 4, 2006, between Itron, Inc., a Washington corporation (the “**Company**”), and Deutsche Bank Trust Company Americas, as trustee (the “**Trustee**”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders (as defined below) of the Company’s 2.50% Convertible Senior Subordinated Notes due 2026 (the “**Securities**”).

ARTICLE I.

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 DEFINITIONS.

“**Affiliate**” means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. For this purpose, “control” shall mean the power to direct the management and policies of a person through the ownership of securities, by contract or otherwise.

“**Agent**” means any Registrar, Paying Agent, Conversion Agent or co-registrar.

“**Asset Sale Make-Whole Fundamental Change**” means a sale, transfer, lease, conveyance or other disposition of all or substantially all of the property or assets of the Company to any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act.

“**Bid Solicitation Agent**” means a Company-appointed agent that performs calculations as set forth in Article X and paragraphs 1 and 10 of the Securities.

“**Board of Directors**” means the Board of Directors of the Company.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary 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.

“**Capital Stock**” of any Person means any and all shares, interests, participations or other equivalents (however designated) of capital stock of such Person and all warrants or options to acquire such capital stock.

“**Closing Sale Price**” means the price of a share of Common Stock on the relevant date, determined (a) on the basis of the closing sale price per share of Common Stock (or if no closing sale price per share of Common Stock is reported, the average of the bid and ask prices per share of Common Stock or, if more than one in either case, the average of the average bid and the average ask prices per share of Common Stock) on such date as reported by the Nasdaq Global Select Market; or (b) if the Common Stock is not then listed on the Nasdaq Global Select Market U.S. national securities exchange in which the Common Stock is listed; or (c) if not so quoted, as reported by National Quotation Bureau, Incorporated or a similar organization. In the absence of a quotation, the Closing Sale Price shall be such price as the Company shall reasonably determine on the basis of such quotations as most accurately reflecting the price that a fully informed buyer, acting on his own accord, would pay to a fully informed seller, acting on his own accord in an arms-length transaction, for a share of such Common Stock.

“**Common Stock**” means the common stock, without par value, of the Company, or such other Capital Stock of the Company into which the Company’s common stock is reclassified or changed.

“**Common Stock Change Make-Whole Fundamental Change**” means any transaction or series of related transactions (other than a Listed Stock Business Combination), in connection with which (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization, asset

sale, lease of assets or otherwise) the Common Stock is exchanged for, converted into, acquired for or constitutes solely the right to receive other securities, other property, assets or cash.

“**Company**” means the party named as such above until a successor replaces it pursuant to the applicable provision hereof and thereafter means the successor. The foregoing sentence shall likewise apply to any such successor or subsequent successor.

“**Company Order**” or “**Company Request**” means a written request or order signed on behalf of the Company by its Chairman of the Board, its Chief Executive Officer, its President, its Chief Operating Officer, its Chief Financial Officer or any Vice President and by its Treasurer or an Assistant Treasurer or its Secretary or an Assistant Secretary, and delivered to the Trustee.

“**Contingent Interest**” has the meaning set forth in paragraph 1 of the Securities.

“**Contingent Interest Measurement Period**” has the meaning set forth in paragraph 1 of the Securities.

“**Contingent Interest Period**” has the meaning set forth in paragraph 1 of the Securities.

“**Contingent Interest Trading Price**” has the meaning set forth in paragraph 1 of the Securities.

“**Conversion Price**” means, as of any date of determination, the dollar amount derived by dividing one thousand dollars (\$1,000) by the Conversion Rate in effect on such date.

“**Conversion Rate**” shall initially be 15.3478 shares of Common Stock per \$1,000 principal amount of Securities, subject to adjustment as provided in Article X.

“**Corporate Trust Office**” shall mean (i) with respect to the Trustee, Deutsche Bank Trust Company Americas, 60 Wall Street, NYCMS 60-2710, New York, New York, 10005-2858, Attention: Trust and Securities Services or any other address that the Trustee may designate with respect to itself from time to time by notice to the Company and the Securityholders.

“**Default**” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“**Designated Senior Indebtedness**” means Indebtedness outstanding under the Senior Credit Facility and any other Senior Indebtedness of the Company that at the date of determination has an aggregate principal amount outstanding of at least \$25.0 million if the instrument governing such Senior Indebtedness expressly states that such Indebtedness is “**Designated Senior Indebtedness**” for purposes of this Indenture.

“**Depository**” means The Depository Trust Company, its nominees and successors.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC thereunder.

“**Existing Non-Operating Subsidiary**” means each of Itron Engineering Services, Inc., EMD Holding, Inc. and Itron International, Inc.

“**Guarantor**” means any Subsidiary of the Company that executes a Guarantee in accordance with the terms of this Indenture and their respective successors and assigns and only for so long as such Guarantor’s Guarantee is in full force and effect and has not been released or discharged in accordance with this Indenture.

“**Holder**” or “**Securityholder**” means a person in whose name a Security is registered on the Registrar’s books.

“Indebtedness” of a person means the principal of, premium, if any, and interest on, and all other obligations in respect of (a) all indebtedness of such person for borrowed money (including all indebtedness evidenced by notes, bonds, debentures or other securities), (b) all obligations (other than trade payables or other accrued current liability or obligation incurred in the ordinary course of business in connection with the obtaining of materials or services) incurred by such person in the acquisition (whether by way of purchase, merger, consolidation or otherwise and whether by such person or another person) of any business, real property or other assets, (c) all reimbursement obligations of such person with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of such person, (d) all capital lease obligations of such person, (e) all net obligations (contingent or otherwise) of such person under interest rate swap, foreign currency exchange or similar instruments or agreements of such person, (f) all obligations and other liabilities, contingent or otherwise, under any lease or related document, including a purchase agreement, conditional sale or other title retention agreement, in connection with the lease of real property or improvements thereon (or any personal property included as part of any such lease) which provides that such person is contractually obligated to purchase or cause a third party to purchase the leased property or pay an agreed-upon residual value of the leased property, including such person’s obligations under such lease or related document to purchase or cause a third party to purchase such leased property or pay an agreed-upon residual value of the leased property to the lessor, (g) guarantees by such person of indebtedness described in clauses (a) through (f) of another person, and (h) all renewals, extensions, refundings, deferrals, restructurings, amendments and modifications of any indebtedness, obligation, guarantee or liability of the kind described in clauses (a) through (g).

“Indenture” means this Indenture as amended or supplemented from time to time.

“Issue Date” means August 4, 2006.

“Make-Whole Fundamental Change” means an Asset Sale Make-Whole Fundamental Change or a Common Stock Change Make-Whole Fundamental Change that occurs before August 1, 2011.

“Market Disruption Event” means the occurrence or existence during the one-half hour period ending on the scheduled close of trading on any trading day for the Common Stock of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating solely to the Common Stock.

“Maturity Date” means August 1, 2026.

“Net Shares” means the shares of Common Stock, if any, that are due upon conversion pursuant to Article X.

“Obligations” means any principal, interest (including, in the case of Senior Indebtedness, Post-Petition Interest), penalties, fees, indemnifications, reimbursement obligations, damages and other liabilities payable under the documentation governing any Indebtedness.

“Officer” means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, any Executive Vice President, any Senior Vice President, the Treasurer or the Secretary of the Company.

“Officer’s Certificate” means a certificate signed by one Officer of the Company.

“Opinion of Counsel” means a written opinion from legal counsel who may be an employee of or counsel for the Company, or other counsel reasonably acceptable to the Trustee.

“Option” means the Underwriters’ option to acquire up to \$45,000,000 aggregate principal amount of additional Securities (**“Additional Securities”**) as provided for in the Underwriting Agreement.

“**Person**” or “**person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or any entity similar to any of the foregoing organized under the law of other countries, or government or other agency or political subdivision thereof.

“**Post-Petition Interest**” means, with respect to any Indebtedness of any Person, all interest accrued or accruing on such Indebtedness after the commencement of any insolvency or liquidation proceeding against such Person in accordance with and at the contract rate (including, without limitation, any rate applicable upon default), specified in the agreement or instrument creating, evidencing or governing such Indebtedness, whether or not, pursuant to applicable law or otherwise, the claim for such interest is allowed as a claim in such insolvency or liquidation proceeding.

“**Principal Return**” means the amount of cash that is due upon conversion pursuant to Article X.

“**Public Acquirer Fundamental Change**” shall mean a Common Stock Change Make-Whole Fundamental Change where the acquirer (or any entity that “beneficially owns” (within the meaning of Rule 13d-3 under the Exchange Act) more than 50% of the total outstanding voting power of all classes of such acquirer’s capital stock entitled to vote generally in the election of directors) has a class of common stock (the “**Public Acquirer Common Stock**”) that is traded on a U.S. national securities exchange or quoted on the Nasdaq Global Select Market or that will be so traded or quoted when issued or exchanged in connection with such Common Stock Change Make-Whole Fundamental Change.

“**Purchase Notice**” means a Purchase Notice in the form set forth in the Securities.

“**Redemption Date**” means the date specified for Redemption of the Securities in accordance with the terms of the Securities and this Indenture.

“**Redemption Price**” means, with respect to a Security to be redeemed by the Company in accordance with Section 3.01, one hundred percent (100%) of the outstanding principal amount of such Security to be redeemed.

“**Responsible Officer**” shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any managing director, director, vice president, assistant vice president, assistant secretary, associate, trust officer or any other officer of the Trustee, as applicable, who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall in each case have direct responsibility for the administration of this Indenture.

“**Rights Agreement**” means that certain Rights Agreement between the Company and Mellon Investor Services, LLC, as rights agent, dated December 11, 2002, as the same may be amended, supplemented or superseded.

“**SEC**” means the Securities and Exchange Commission.

“**Securities**” means the 2.50% Convertible Senior Subordinated Notes due 2026 issued by the Company pursuant to this Indenture.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC thereunder.

“**Senior Credit Facility**” means the credit agreement, dated December 17, 2003, by and among the Company and Bear Stearns Corporate Lending Inc., as Syndication Agent and Wells Fargo Bank, National Association, as Administrative Agent, and the other lenders party thereto, as amended by the First Amendments, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, Seventh Amendment and Eighth Amendment thereto, together with the documents now or thereafter related thereto (including, without limitation, any guarantee agreements and any security documents executed in connection therewith), in each case as such agreements may be amended (including any amendment and restatement thereof), supplemented or otherwise modified from time to time, including any deferral thereof or any agreement extending

the maturity of, refinancing, replacing or otherwise restructuring (including by way of increasing the amount of commitments thereunder and adding the Company or any Subsidiaries of the Company as additional borrowers or guarantors thereunder) all or any portion of the Indebtedness under such agreement or any successor or replacement agreement and whether by the same or any other agent, lender or group of lenders (or other institutions).

“**Senior Indebtedness**” means, with respect to any Person, whether outstanding on the date of this Indenture or thereafter issued, all Obligations of such Person under the Senior Credit Facility, hedging obligations of such Person and any other Indebtedness of such Person unless the instrument creating or evidencing such Indebtedness expressly provides that such Indebtedness is not senior or superior in right of payment to the Securities or the applicable Guarantee thereof, including other obligations, such as fees, expenses, reimbursement obligations arising from letters of credit, indemnities and other obligations specified in the documents governing such Senior Indebtedness, and all renewals, extensions, modifications, amendments or refinancings thereof; *provided*, that in no event shall Senior Indebtedness include (a) to the extent that it may constitute Indebtedness, any Obligation for federal, state, local or other taxes; (b) any Indebtedness among or between the Company and any Subsidiary, unless and for so long as such Indebtedness has been pledged to secure Obligations to a third party; (c) to the extent that it may constitute Indebtedness, any Obligation in respect of any trade payable incurred for the purchase of goods or materials, or for services obtained in the ordinary course of business; (d) Indebtedness evidenced by the Securities; (e) Indebtedness that is expressly subordinate or junior in right of payment to any other Indebtedness of such Person; *provided* that for the avoidance of doubt, Indebtedness under the Senior Credit Facility shall not be deemed expressly subordinate or junior to liens of Indebtedness permitted under the Senior Credit Facility simply by reason of the fact that such liens or Indebtedness are permitted under the Senior Credit Facility; (f) to the extent that it may constitute Indebtedness, any Obligation owing under leases (other than capital lease obligations) or management agreements; and (g) any Obligation that by operation of law is subordinate to any general unsecured Obligations.

“**Significant Subsidiary**” with respect to any person means any subsidiary of such person that constitutes a “significant subsidiary” within the meaning of Rule 1-02(w) of Regulation S-X under the Securities Act, as such regulation is in effect on the date of this Indenture.

“**Subsidiary**” means (i) a corporation a majority of whose Voting Stock is at the time, directly or indirectly, owned by the Company, by one or more subsidiaries of the Company or by the Company and one or more of its subsidiaries or (ii) any other person (other than a corporation) in which the Company, one or more of its subsidiaries, or the Company and one or more of its subsidiaries, directly or indirectly, at the date of determination thereof, own at least a majority ownership interest.

“**TIA**” means the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbb) as in effect on the Issue Date; *provided, however*, that if the TIA is amended after such date, “TIA” means, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended, or any successor statute.

“**Trading Day**” means any day during which all of the following conditions are satisfied: (i) trading in the Common Stock generally occurs; (ii) there is no Market Disruption Event; and (iii) a closing sale price for the Common Stock is provided on the Nasdaq Global Select Market or, if the Common Stock is not then listed on the Nasdaq Global Select Market, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded.

“**Trading Price**” means, on any date, the average of the secondary market bid quotations for the Securities obtained by the Bid Solicitation Agent on behalf of the Trustee for five million dollars (\$5,000,000) principal amount of Securities at approximately 4:00 p.m., New York City time, on such date, from three (3) independent, nationally recognized securities dealers selected by the Company; *provided*, that if the Bid Solicitation Agent on behalf of the Trustee can reasonably obtain only two (2) such bids, then the average of such two (2) bids shall instead be used; *provided further*, that if the Bid Solicitation Agent on behalf of the Trustee can reasonably obtain only one (1) such bid, then such bid shall instead be used; *provided further*, that if, on a given date, the Bid Solicitation Agent on behalf of the Trustee cannot reasonably obtain at least one (1) such bid, or if, in reasonable, good faith judgment of the Board of Directors, which judgment shall be described in a Board Resolution, the bid quotation or quotations so obtained by the Bid Solicitation Agent on behalf of the Trustee are not indicative of the secondary market value of the Securities, then, in each case, the Trading Price per \$1,000 principal amount of Securities on such date shall be deemed to be equal to 98% of the product of (I) the Conversion Rate in effect on such date and (II) the Closing Sale Price on such date.

“**Trustee**” means the party named as such in this Indenture until a successor replaces it in accordance with the provisions hereof and thereafter means the successor.

“**Underwriters**” means UBS Securities LLC, Canaccord Adams Inc., First Albany Capital, Inc. and Wells Fargo Securities, LLC.

“**Underwriting Agreement**” means the Underwriting Agreement dated July 31, 2006 between the Company and the UBS Securities LLC, as representatives of the Underwriters.

“**Voting Stock**” of any Person means all classes of the Capital Stock of such Person ordinarily entitled to vote generally in the election of directors of such Person.

Section 1.02 OTHER DEFINITIONS.

Term	Defined in Section
“Acquirer Stock Conversion Right Adjustment”	10.14
“Acquisition of Voting Control”	3.09
“Additional Securities”	definition of “Option”
“Aggregate Amount”	10.05
“Applicable Price”	10.14
“Bankruptcy Law”	6.01
“BCF Adjustment Cap”	10.06
“BCF Make-Whole Cap”	10.14
“Business Day”	14.07
“Cash Percentage”	10.02
“Cash Percentage Notice”	10.02
“Cash Settlement Averaging Period”	10.02
“Change in Control”	3.09
“Collective Election”	10.11
“Conversion Agent”	2.03
“Conversion Date”	10.02
“Conversion Value”	10.01
“CPDI Regulations”	13.01
“Current Market Price”	10.05
“Custodian”	6.01
“Daily Conversion Value”	10.02
“Daily Net Shares”	10.02
“Daily Principal Return”	10.02
“Daily Settlement Amount”	10.02
“Determination Date”	10.05
“Distribution Date”	10.05
“Effective Date”	10.14
“Event of Default”	6.01
“Ex Date”	10.05
“Expiration Date”	10.05
“Expiration Time”	10.05
“Fundamental Change”	3.09
“Fundamental Change Notice”	3.09
“Fundamental Change Repurchase Date”	3.09
“Fundamental Change Repurchase Price”	3.09
“Fundamental Change Repurchase Right”	3.09
“Funding Guarantor”	12.05
“Junior Securities”	11.15

Term	Defined in Section
“Global Security”	2.01
“Guarantee”	12.01
“Guaranteed Indebtedness”	4.12
“Legal Holiday”	14.07
“Listed Stock Business Combination”	3.09
“Make-Whole Applicable Increase”	10.14
“Make-Whole Conversion Period”	10.14
“Make-Whole Consideration”	10.14
“Notice of Default”	6.01
“Note Measurement Period”	10.01
“Option Purchase Date”	3.08
“Option Purchase Notice”	3.08
“Option Purchase Price”	3.08
“Participants”	2.15
“Paying Agent”	2.03
“Payment Blockage Notice”	11.02
“Payment Blockage Period”	11.02
“Physical Securities”	2.01
“Public Acquirer Common Stock”	definition of “Public Acquirer Fundamental Change”
“Purchase at Holder’s Option”	Article III
“Purchased Shares”	10.05
“Redemption”	Article III
“Reference Property”	10.11
“Registrar”	2.03
“Repurchase Upon Fundamental Change”	Article III
“Rights”	10.05
“Settlement Amount”	10.02
“Tax Legend”	2.17
“Termination of Trading”	3.09
“Trading Price Condition”	10.01
“Underlying Shares”	10.05

Section 1.03 INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

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

“**Commission**” means the SEC;

“**indenture securities**” means the Securities;

“**indenture security holder**” means a Securityholder or a Holder;

“**indenture to be qualified**” means this Indenture;

“**indenture trustee**” or “**institutional trustee**” means the Trustee; and

“**obligor**” on the indenture securities means the Company or any successor.

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

Section 1.04 RULES OF CONSTRUCTION.

Unless the context otherwise requires:

- (i) a term has the meaning assigned to it;
- (ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with U.S. generally accepted accounting principles in effect from time to time;
- (iii) “**or**” is not exclusive;
- (iv) “**including**” means “**including without limitation**”;
- (v) words in the singular include the plural and words in the plural include the singular;
- (vi) provisions apply to successive events and transactions;
- (vii) the term “**interest**” includes Contingent Interest, unless the context otherwise requires;
- (viii) “**herein**,” “**hereof**” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision of this Indenture; and
- (ix) references to currency shall mean the lawful currency of the United States of America, unless the context requires otherwise.

ARTICLE II.

THE SECURITIES

Section 2.01 FORM AND DATING.

The Securities and the Trustee’s certificate of authentication shall be substantially in the form set forth in Exhibit A, which is incorporated in and forms a part of this Indenture. The Securities may have notations, legends or endorsements as required by law, stock exchange rule or usage, *provided* such notations, legends or endorsements are in form reasonably acceptable to the Company. Each Security shall be dated the date of its authentication.

The Securities shall be issued initially in the form of one or more Global Securities, substantially in the form set forth in Exhibit A (the “**Global Security**”), deposited with the Trustee, as custodian for the Depositary, registered in the name of the Depositary or a nominee thereof, duly executed by the Company and authenticated by the Trustee as hereinafter provided and bearing the legends set forth in Exhibits B-1 and B-2. The aggregate principal amount of the Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary, as hereinafter provided; *provided*, that in no event shall the aggregate principal amount of the Global Security or Global Securities exceed \$300,000,000 (or \$345,000,000 if the Underwriters elect to purchase all of the Additional Securities pursuant to the Option).

Securities issued in exchange for interests in a Global Security pursuant to Section 2.15 may be issued in the form of permanent certificated Securities in registered form in substantially the form set forth in Exhibit A (the “**Physical Securities**”) and, if applicable, bearing any legends required by Section 2.17.

Section 2.02 EXECUTION AND AUTHENTICATION.

One duly authorized Officer shall sign the Securities for the Company by manual or facsimile signature.

A Security's validity shall not be affected by the failure of an Officer whose signature is on such Security to hold, at the time the Security is authenticated, the same office at the Company.

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

Upon a written order of the Company signed by one Officer of the Company, the Trustee shall authenticate Securities for original issue in the aggregate principal amount of \$300,000,000 and such additional principal amount, if any, as shall be determined pursuant to the next sentence of this Section 2.02. Upon receipt by the Trustee of an Officer's Certificate stating that the Underwriters have elected to purchase from the Company a specified principal amount of Additional Securities, not to exceed \$45,000,000 pursuant to the Option, the Trustee shall authenticate and deliver such specified principal amount of Additional Securities to or upon the written order of the Company signed as provided in the immediately preceding sentence. Such Officer's Certificate must be received by the Trustee not later than the proposed date for delivering of such Additional Securities. The aggregate principal amount of Securities outstanding at any time may not exceed \$300,000,000 (or \$345,000,000 if the Underwriters have elected to purchase all of the Additional Securities pursuant to the Option) except as provided in this Section 2.02.

If a written order of the Company pursuant to this Section 2.02 has been, or simultaneously is, delivered, any instructions by the Company to the Trustee with respect to endorsement, delivery or redelivery of a Security issued in global form shall be in writing but need not comply with Section 14.04 hereof and need not be accompanied by an Opinion of Counsel.

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

Section 2.03 REGISTRAR, PAYING AGENT AND CONVERSION AGENT.

The Company shall maintain, or shall cause to be maintained, (i) an office or agency in the Borough of Manhattan, The City of New York, where Securities may be presented for registration of transfer or for exchange ("**Registrar**"), (ii) an office or agency in the Borough of Manhattan, The City of New York, where Securities may be presented for payment ("**Paying Agent**") and (iii) an office or agency in the Borough of Manhattan, The City of New York, where Securities may be presented for conversion ("**Conversion Agent**"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may appoint or change one or more co-Registrars, one or more additional paying agents and one or more additional conversion agents without notice and may act in any such capacity on its own behalf. The term "Registrar" includes any co-registrar; the term "Paying Agent" includes any additional paying agent; and the term "Conversion Agent" includes any additional conversion agent.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any such Agent not a party to this Indenture. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such.

The Company initially appoints the Trustee as Paying Agent, Registrar and Conversion Agent.

Section 2.04 PAYING AGENT TO HOLD MONEY IN TRUST.

Each Paying Agent shall hold in trust for the benefit of the Securityholders or the Trustee all moneys held by the Paying Agent for the payment of the Securities, and shall notify the Trustee of any Default by the Company in making any such payment. While any such Default continues, the Trustee may require a Paying Agent to pay all

money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and account for any funds so paid by it. Upon payment over to the Trustee, the Paying Agent shall have no further liability for such money. If the Company acts as Paying Agent, it shall segregate and hold as a separate trust fund all money held by it as Paying Agent.

Section 2.05 SECURITYHOLDER LISTS.

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

Section 2.06 TRANSFER AND EXCHANGE.

Subject to Sections 2.15 and 2.16, if Securities are presented to the Registrar with a request to register their transfer or to exchange them for an equal principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange if its requirements for such transaction are met. To permit registrations of transfer and exchanges, the Trustee shall authenticate Securities at the Registrar's request or upon the Trustee's receipt of a Company Order therefor. The Company or the Trustee, as the case may be, shall not be required to register the transfer of or exchange any Security (i) for a period of twenty (20) days before selecting, pursuant to Section 3.03, Securities to be redeemed or (ii) during a period beginning at the opening of business twenty (20) days before the mailing of a notice of redemption under Section 3.04 and ending at the close of business on the day of such mailing or (iii) that has been selected for Redemption or for which a Purchase Notice has been delivered pursuant to Section 3.08 or 3.09, and not withdrawn, in accordance with this Indenture, except, in the case of a partial redemption, purchase or repurchase, that portion of Securities not being redeemed or repurchased.

No service charge shall be made for any transfer, exchange or conversion of Securities, but the Company or the Trustee may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer, exchange or conversion of Securities, other than exchanges pursuant to Section 2.10, 9.05 or 10.02, or Article III, not involving any transfer.

Section 2.07 REPLACEMENT SECURITIES.

If the Holder of a Security claims that the Security has been mutilated, lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Security upon surrender to the Trustee of the mutilated Security, or upon delivery to the Trustee of evidence of the loss, destruction or theft of the Security satisfactory to the Trustee and the Company. In the case of a lost, destroyed or wrongfully taken Security, if required by the Trustee or the Company, an indemnity bond must be provided by the Holder that is reasonably satisfactory to the Trustee and the Company to indemnify and hold harmless the Company and the Trustee from any loss which any of them may suffer if such Security is replaced. The Trustee and the Company may charge such Holder for their expenses in replacing a Security.

In case any such mutilated, lost, destroyed or wrongfully taken 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 when due.

Upon the issuance of any new Securities under this Section 2.07, the Company may require the payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the reasonable fees and expenses of the Trustee or the Registrar) connected therewith.

Every replacement Security is an additional obligation of the Company only as provided in Section 2.08.

Section 2.08 OUTSTANDING SECURITIES.

Securities outstanding at any time are all the Securities authenticated by the Trustee except for those converted, those cancelled by it, those delivered to it for cancellation and those described in this Section 2.08 as not outstanding. Except to the extent provided in Section 2.09, a Security does not cease to be outstanding because the Company or one of its Subsidiaries or Affiliates holds the Security.

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof satisfactory to it, or a court holds, that the replaced Security is held by a “protected purchaser,” as that term is defined in the New York Uniform Commercial Code.

If the Paying Agent (other than the Company) holds on an Option Purchase Date, Redemption Date, Fundamental Change Repurchase Date or Maturity Date, money sufficient to pay the aggregate Option Purchase Price, Redemption Price, Fundamental Change Repurchase Price or principal amount, as the case may be, with respect to all Securities to be redeemed, purchased or paid upon Purchase at Holder’s Option, Redemption, Repurchase Upon Fundamental Change or maturity, as the case may be, in each case plus, if applicable, accrued and unpaid interest, if any, payable as herein provided upon Purchase at Holder’s Option, Redemption, Repurchase Upon Fundamental Change or maturity, then (unless there shall be a Default in the payment of such aggregate Option Purchase Price, Redemption Price, Fundamental Change Repurchase Price or principal amount, or of such accrued and unpaid interest), except as otherwise provided herein, on and after such date such Securities shall be deemed to be no longer outstanding, interest on such Securities shall cease to accrue, and such Securities shall be deemed paid whether or not such Securities are delivered to the Paying Agent. Thereafter, all rights of the Holders of such Securities shall terminate with respect to such Securities, other than the right to receive the Option Purchase Price, Redemption Price, Fundamental Change Repurchase Price or principal amount, as the case may be, plus, if applicable, such accrued and unpaid interest, in accordance with this Indenture. Notwithstanding the foregoing, a Holder shall be entitled to convert a Security on the Maturity Date, *provided* such Security has not been surrendered for payment upon maturity.

If a Security is converted in accordance with Article X, then, from and after the time of such conversion on the Conversion Date, such Security shall cease to be outstanding, and interest, if any, shall cease to accrue on such Security unless there shall be a Default in the payment or delivery of the consideration payable hereunder upon such conversion.

Section 2.09 SECURITIES HELD BY THE COMPANY OR AN AFFILIATE.

In determining whether the Holders of the required aggregate principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Company or any of its Subsidiaries or Affiliates shall be considered as though not outstanding, except that, for the purposes of determining whether a Responsible Officer of the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which the Trustee knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be considered to be outstanding for purposes of this Section 2.09 if the pledgee establishes, to the satisfaction of the Trustee the pledgee’s right to concur with respect to such Securities and that the pledgee is not, and is not acting at the direction or on behalf of, the Company, any other obligor on the Securities, an Affiliate of the Company or an affiliate of any such other obligor. In the event of a dispute as to whether the pledgee has established the foregoing, the Trustee may rely on the advice of counsel or on an Officer’s Certificate.

Section 2.10 TEMPORARY SECURITIES.

Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall, upon receipt of a Company Order, authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee, upon receipt of a Company Order, shall authenticate definitive Securities in exchange for temporary Securities. Until so exchanged, each temporary Security shall in all respects be entitled to the same benefits under this Indenture as definitive Securities, and such temporary Security shall be exchangeable for definitive Securities in accordance with the terms of this Indenture.

Section 2.11 CANCELLATION.

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar, Paying Agent and Conversion Agent shall forward to the Trustee any Securities surrendered to them for transfer, exchange, payment or conversion. The Trustee shall promptly cancel all Securities surrendered for transfer, exchange, payment, conversion or cancellation in accordance with its customary procedures. The Company may not issue new Securities to replace Securities that it has paid or delivered to the Trustee for cancellation or that any Securityholder has converted pursuant to Article X. All cancelled Securities held by the Trustee shall be destroyed, and certification of their destruction shall be delivered by the Trustee to the Company unless the Company shall, by a Company Order, direct that cancelled Securities be returned to it.

Section 2.12 DEFAULTED INTEREST.

If and to the extent the Company defaults in a payment of interest on the Securities, the Company shall pay in cash the defaulted interest in any lawful manner plus, to the extent not prohibited by applicable statute or case law, interest on such defaulted interest at the rate provided in the Securities. The Company may pay the defaulted interest (plus interest on such defaulted interest) to the persons who are Securityholders on a subsequent special record date. The Company shall fix such record date and payment date. At least fifteen (15) calendar days before the record date, the Company shall mail to Securityholders a notice that states the record date, payment date and amount of interest to be paid. Upon the due payment in full, interest shall no longer accrue on such defaulted interest pursuant to this Section 2.12.

Section 2.13 CUSIP NUMBERS.

The Company in issuing the Securities may use one or more "CUSIP" numbers, and, if so, the Trustee shall use the CUSIP numbers in notices of redemption or exchange as a convenience to Holders; *provided, however*, that no representation is hereby deemed to be made by the Trustee as to the correctness or accuracy of the CUSIP numbers printed on the notice or on the Securities; *provided further*, that reliance may be placed only on the other identification numbers printed on the Securities, and the effectiveness of any such notice shall not be affected by any defect in, or omission of, such CUSIP numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers.

Section 2.14 DEPOSIT OF MONEYS.

Prior to 11:00 A.M., New York City time, on each interest payment date, Maturity Date, Redemption Date, Option Purchase Date or Fundamental Change Repurchase Date, the Company shall have deposited with a Paying Agent (or, if the Company is acting as its own Paying Agent, shall have segregated and shall hold in trust in accordance with Section 2.04) money, in funds immediately available on such date, sufficient to make cash payments, if any, due on such interest payment date, Maturity Date, Redemption Date, Option Purchase Date or Fundamental Change Repurchase Date, as the case may be, in a timely manner which permits the Paying Agent to remit payment to the Holders on such interest payment date, Maturity Date, Redemption Date, Option Purchase Date or Fundamental Change Repurchase Date, as the case may be.

Section 2.15 BOOK-ENTRY PROVISIONS FOR GLOBAL SECURITIES.

(A) The Global Securities initially shall (i) be registered in the name of the Depository or the nominee of the Depository, (ii) be delivered to the Trustee as custodian for the Depository and (iii) bear legends as set forth in Section 2.17.

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

(B) Transfers of Global Securities shall be limited to transfers in whole, but not in part, to the Depositary, its successors or their respective nominees. In addition, Physical Securities shall be transferred to all beneficial owners, as identified by the Depositary, in exchange for their beneficial interests in Global Securities only if (i) the Depositary notifies the Company that the Depositary is unwilling or unable to continue as depositary for any Global Security (or the Depositary ceases to be a “clearing agency” registered under Section 17A of the Exchange Act) and, in either case, a successor Depositary is not appointed by the Company within ninety (90) days of such notice or cessation or (ii) an Event of Default has occurred and is continuing and the Registrar has received a written request from the Depositary to issue Physical Securities.

(C) In connection with the transfer of a Global Security in its entirety to beneficial owners pursuant to Section 2.15(B), such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall upon written instructions from the Company authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Physical Securities of authorized denominations.

(D) The Holder of any Global Security may grant proxies and otherwise authorize any Person, including Participants and Persons that may hold interests through Participants, to take any action which a Holder is entitled to take under this Indenture or the Securities.

Section 2.16 SPECIAL TRANSFER PROVISIONS.

Notwithstanding any other provisions of this Indenture, but except as provided in Section 2.15(B), a Global Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.15 or this Section 2.16. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

Section 2.17 RESTRICTIVE LEGENDS.

Each Global Security shall bear the legend as set forth in Exhibit B-1.

Each Global Security and Physical Security shall bear the legend (the “**Tax Legend**”) set forth in Exhibit B-2.

Section 2.18 RANKING.

The indebtedness of the Company arising under or in connection with this Indenture and every outstanding Security issued under this Indenture from time to time constitutes and will constitute an unsecured senior subordinated obligation of the Company and shall be subordinate in right of payment to all of the existing and future Senior Indebtedness of the Company as provided in Article XI, equal in right of payment to all of the existing and future unsecured senior subordinated Indebtedness of the Company, and senior in right of payment to any existing or future subordinated indebtedness of the Company.

ARTICLE III.

REDEMPTION AND REPURCHASE

Redemption of the Securities, as permitted by any provision of this Indenture, shall be made:

- (i) with respect to a repurchase at the Company's option, in accordance with Sections 3.01 to 3.07 and paragraphs 6 and 7 of the Securities (a "**Redemption**"),
- (ii) with respect to a repurchase at the Holder's option, in accordance with Section 3.08 and paragraph 8 of the Securities (a "**Purchase at Holder's Option**") and
- (iii) with respect to any repurchase upon a Fundamental Change, in accordance with Section 3.09 and paragraph 9 of the Securities (a "**Repurchase Upon Fundamental Change**"),

in each case in accordance with the applicable provisions of this Article III.

The Company shall comply with all federal and state securities laws, and the applicable laws of any foreign jurisdiction, in connection with any offer to sell or solicitations of offers to buy Securities pursuant to this Article III, including, to the extent applicable, complying with the provisions of Rule 13e-4 and Regulation 14E under the Exchange Act and filing a Schedule TO or any other required schedule under the Exchange Act or other applicable laws.

Section 3.01 RIGHT OF REDEMPTION.

The Company shall have the right, at the Company's option, at any time, and from time to time, on a Redemption Date on or after August 1, 2011, to redeem all or any part of the Securities at a price payable in cash equal to the Redemption Price plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date; *provided, however*, that in no event shall any Redemption Date be a Legal Holiday; *provided, further*, that if the Redemption Date with respect to a Security is after a record date for the payment of an installment of interest and on or before the related interest payment date, then accrued and unpaid interest to, but excluding, such interest payment date shall be paid, on such interest payment date, to the Holder of record of such Security at the close of business on such record date, and the Holder surrendering such Security for Redemption shall receive only the Redemption Price and shall not be entitled to any such interest unless such Holder was also the Holder of record of such Security at the close of business on such record date; *provided, further*, that the Company must make at least 10 semi-annual interest payments (including the interest payments on February 1, 2007 and August 1, 2011) in the full amount required by this Indenture with respect to the Securities prior to redeeming any Securities pursuant to this Section 3.01.

Securities in denominations larger than \$1,000 principal amount may be redeemed in part but only in integral multiples of \$1,000 principal amount.

Section 3.02 NOTICES TO TRUSTEE.

If the Company elects to redeem Securities pursuant to Section 3.01 and paragraph 6 of the Securities, it shall notify the Trustee of the Redemption Date, the applicable provision of this Indenture pursuant to which the Redemption is to be made and the aggregate principal amount of Securities to be redeemed, which notice shall be provided to the Trustee by the Company at least fifteen (15) days prior to the mailing, in accordance with Section 3.04, of the notice of Redemption (unless a shorter notice period shall be satisfactory to the Trustee).

Section 3.03 SELECTION OF SECURITIES TO BE REDEEMED.

If the Company has elected to redeem less than all the Securities pursuant to Section 3.01 and paragraph 6 of the Securities, the Trustee shall, within five (5) Business Days after receiving the notice specified in Section 3.02, select the Securities to be redeemed by lot, on a *pro rata* basis or in accordance with any other method the Trustee considers fair and appropriate. The Trustee shall make such selection from Securities then outstanding and not already to be redeemed by virtue of having been previously called for Redemption. The Trustee may select for Redemption portions of the principal amount of Securities that have denominations larger than \$1,000 principal amount. Securities and portions of them the Trustee selects for Redemption shall be in amounts of \$1,000 principal amount or integral multiples of \$1,000 principal amount. The Trustee shall promptly notify the Company in writing of the Securities selected for Redemption and the principal amount thereof to be redeemed.

The Registrar need not register the transfer of or exchange any Securities that have been selected for Redemption, except the unredeemed portion of the Securities being redeemed in part. As provided in Section 2.06, the Registrar need not register the transfer of or exchange any Security for a period of twenty (20) days before selecting, pursuant to this Section 3.03, Securities to be redeemed.

Section 3.04 NOTICE OF REDEMPTION.

At least thirty (30) days but not more than sixty (60) days before a Redemption Date, the Company shall mail, or cause to be mailed, by first-class mail a notice of Redemption to each Holder whose Securities are to be redeemed, at the address of such Holder appearing in the security register.

The notice shall identify the Securities and the aggregate principal amount thereof to be redeemed pursuant to the Redemption and shall state:

- (i) the Redemption Date;
- (ii) the Redemption Price plus, if applicable, accrued and unpaid interest, if any, to, but excluding, the Redemption Date;
- (iii) the Conversion Rate and the Conversion Price;
- (iv) the names and addresses of the Paying Agent and the Conversion Agent;
- (v) that the right to convert the Securities called for Redemption will terminate at the close of business on the Business Day immediately preceding the Redemption Date, unless there shall be a Default in the payment of the Redemption Price or accrued and unpaid interest, if any, payable as provided in this Indenture upon Redemption;
- (vi) that Holders who want to convert Securities must satisfy the requirements of Article X;
- (vii) the paragraph of the Securities pursuant to which the Securities are to be redeemed;
- (viii) that Securities called for Redemption must be surrendered to the Paying Agent to collect the Redemption Price plus, if applicable, accrued and unpaid interest, if any, payable as herein provided upon Redemption;
- (ix) that, unless there shall be a Default in the payment of the Redemption Price or accrued and unpaid interest, if any, payable as herein provided upon Redemption (including, where the Redemption Date is after a record date for the payment of an installment of interest and on or before the related interest payment date, the payment, on such interest payment date, of accrued and unpaid interest to, but excluding, such interest payment date to the Holder of record at the close of business on such record date), interest on Securities called for Redemption ceases to accrue on and after the Redemption Date, except as otherwise provided herein, and all rights of the Holders of such Securities shall terminate on and after the Redemption Date, other than the right to receive, upon surrender of such Securities and in accordance with this Indenture, the amounts due hereunder on such Securities upon Redemption (and the rights of the Holder(s) of record of such Securities to receive, on the applicable interest payment date, accrued and unpaid interest in accordance herewith in the event the Redemption Date is after a record date for the payment of an installment of interest and on or before the related interest payment date); and
- (x) the CUSIP number or numbers, as the case may be, of the Securities.

The right, pursuant to Article X, to convert Securities called for Redemption shall terminate at the close of business on the Business Day immediately preceding the Redemption Date, unless there shall be a Default in the payment of the Redemption Price or accrued and unpaid interest, if any, payable as herein provided upon Redemption.

At the Company's request, upon reasonable prior notice, the Trustee shall mail the notice of Redemption in the Company's name and at the Company's expense; *provided, however*, that the form and content of such notice shall be prepared by the Company.

Section 3.05 EFFECT OF NOTICE OF REDEMPTION.

Once notice of Redemption is mailed, Securities called for Redemption become due and payable on the Redemption Date at the specified Redemption Price (together with accrued and unpaid interest, if any, payable as provided herein) and, on and after such Redemption Date (unless there shall be a Default in the payment of such consideration), except as otherwise provided herein, such Securities shall cease to bear interest, and all rights of the Holders of such Securities shall terminate, other than the right to receive such consideration upon surrender of such Securities to the Paying Agent.

If any Security shall not be fully and duly paid in accordance herewith upon Redemption, the principal of, and accrued and unpaid interest on, such Security shall, until paid, bear interest at the rate borne by such Security on the principal amount of such Security, and such Security shall continue to be convertible pursuant to Article X.

Notwithstanding anything herein to the contrary, there shall be no purchase of any Securities pursuant to a Redemption if there has occurred (prior to, on or after, as the case may be, the mailing of the notice of Redemption specified in Section 3.04) and is continuing an Event of Default (other than a Default in the payment of the consideration payable as herein provided upon Redemption). The Paying Agent will promptly return to the respective Holders thereof any Securities held by it during the continuance of such an Event of Default.

Section 3.06 DEPOSIT OF REDEMPTION PRICE.

Prior to 11:00 A.M., New York City time on the Redemption Date, the Company shall deposit with a Paying Agent (or, if the Company is acting as its own Paying Agent, shall have segregated and shall hold in trust in accordance with Section 2.04) money, in funds immediately available on the Redemption Date, sufficient to pay the consideration payable as herein provided upon Redemption with respect to all Securities to be redeemed on that date. The Paying Agent shall return to the Company, as soon as practicable, any money not required for that purpose.

Section 3.07 SECURITIES REDEEMED IN PART.

Any Security to be submitted for Redemption only in part shall be delivered pursuant to Section 3.05 (with, if the Company or the Trustee so requires, 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 its attorney duly authorized in writing with a medallion guarantee), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination(s) as requested by such Holder, of the same tenor and in aggregate principal amount equal to the portion of such Security not submitted for Redemption.

If any Security selected for partial Redemption is converted in part, the principal of such Security subject to Redemption shall be reduced by the principal amount of such Security that is converted.

Section 3.08 PURCHASE OF SECURITIES AT OPTION OF THE HOLDER.

(A) At the option of the Holder thereof, Securities (or portions thereof that are integral multiples of \$1,000 in principal amount) shall be purchased by the Company pursuant to this Section 3.08 and paragraph 8 of the Securities on August 1, 2011, August 1, 2016 and August 1, 2021 (each, an "**Option Purchase Date**"), at a purchase price, payable in cash, equal to one hundred percent (100%) of the principal amount of the Securities (or such portions thereof) to be so purchased (the "**Option Purchase Price**"), plus accrued and unpaid interest, if any, to, but excluding, the applicable Option Purchase Date (*provided*, that such accrued and unpaid interest shall be paid to the Holder of record of such Securities at the close of business on the record date immediately preceding such Option Purchase Date and the Holder surrendering such Security for purchase shall receive only the Option Purchase Price

and shall not be entitled to any such interest unless such Holder was also the Holder of record of such Security at the close of business on such record date), upon:

(i) delivery to the Company (if it is acting as its own Paying Agent), or to a Paying Agent designated by the Company for such purpose in the Option Purchase Notice, by such Holder, at any time from the opening of business on the date that is twenty (20) Business Days prior to the applicable Option Purchase Date until the close of business on the Business Day immediately preceding the applicable Option Purchase Date, of a Purchase Notice, in the form set forth in the Securities or any other form of written notice substantially similar thereto, in each case, duly completed and signed, with appropriate signature guarantee, stating:

(a) the certificate number(s) of the Securities which the Holder will deliver to be purchased, if such Securities are in certificated form;

(b) the principal amount of Securities to be purchased, which must be \$1,000 or an integral multiple thereof; and

(c) that such principal amount of Securities are to be purchased as of the applicable Option Purchase Date pursuant to the terms and conditions specified in paragraph 8 of the Securities and Section 3.08 of this Indenture; and

(ii) delivery to the Company (if it is acting as its own Paying Agent), or to a Paying Agent designated by the Company for such purpose in the Option Purchase Notice, at any time after delivery of such Purchase Notice, of such Securities (together with all necessary endorsements), such delivery being a condition to receipt by the Holder of the Option Purchase Price therefor plus accrued and unpaid interest, if any, payable as herein provided upon Purchase at Holder's Option (*provided, however*, that the Holder of record of such Securities on the record date immediately preceding such Option Purchase Date need not surrender such Securities in order to be entitled to receive, on the Option Purchase Date, the accrued and unpaid interest due thereon).

If such Securities are held in book-entry form through the Depository, the Purchase Notice shall comply with applicable procedures of the Depository.

Upon such delivery of Securities to the Company (if it is acting as its own Paying Agent) or such Paying Agent, such Holder shall be entitled to receive, upon request, from the Company or such Paying Agent, as the case may be, a nontransferable receipt of deposit evidencing such delivery.

Notwithstanding anything herein to the contrary, any Holder that has delivered the Purchase Notice contemplated by this Section 3.08(A) to the Company (if it is acting as its own Paying Agent) or to a Paying Agent designated by the Company for such purpose in the Option Purchase Notice shall have the right to withdraw such Purchase Notice by delivery, at any time prior to the close of business on the Business Day immediately preceding the applicable Option Purchase Date, of a written notice of withdrawal to the Company (if acting as its own Paying Agent) or the Paying Agent, which notice shall contain the information specified in Section 3.08(B)(vii).

The Paying Agent shall promptly notify the Company of the receipt by it of any Purchase Notice or written notice of withdrawal thereof.

(B) The Company shall give notice (the "**Option Purchase Notice**") on a date not less than twenty (20) Business Days prior to each Option Purchase Date to each Holder at its address shown in the register of the Registrar and to each beneficial owner as required by applicable law. Such notice shall state:

(i) the Option Purchase Price plus accrued and unpaid interest, if any, to, but excluding, such Option Purchase Date and the Conversion Rate;

(ii) the Conversion Rate then applicable to the Securities;

(iii) the names and addresses of the Paying Agent and the Conversion Agent;

(iv) that Securities with respect to which a Purchase Notice is given by a Holder may be converted pursuant to Article X, if otherwise convertible in accordance with Article X, only if such Purchase Notice has been withdrawn in accordance with this Section 3.08 or if there shall be a Default in the payment of such Option Purchase Price or in accrued and unpaid interest, if any, payable as herein provided upon Purchase at Holder's Option;

(v) that Securities (together with any necessary endorsements) must be surrendered to the Paying Agent to collect payment of the Option Purchase Price plus (if such Holder was the Holder of record of the applicable Security at the close of business on the record date immediately preceding the Option Purchase Date) accrued and unpaid interest, if any, payable as herein provided upon Purchase at Holder's Option;

(vi) that the Option Purchase Price, plus accrued and unpaid interest, if any, to, but excluding, such Option Purchase Date, for any Security as to which a Purchase Notice has been given and not withdrawn will be paid as promptly as practicable, but in no event later than the third Business Day after the later of such Option Purchase Date or the time of delivery of the Security as described in clause (v) above; *provided, however*, that such accrued and unpaid interest shall be paid, on the applicable interest payment date, to the Holder of record of such Security at the close of business on the record date immediately preceding such Option Purchase Date;

(vii) the procedures the Holder must follow to exercise rights under this Section 3.08 (including the name and address of the Paying Agent) and a brief description of those rights;

(viii) that a Holder will be entitled to withdraw its election in the Purchase Notice if the Company (if acting as its own Paying Agent) or the Paying Agent receives, at any time prior to the close of business on the Business Day immediately preceding the applicable Option Purchase Date, or such longer period as may be required by law, a letter or telegram, telex or facsimile transmission (with confirmation of good transmission thereof) setting forth (I) the name of such Holder, (II) a statement that such Holder is withdrawing its election to have Securities purchased by the Company on such Option Purchase Date pursuant to a Purchase at Holder's Option, (III) the certificate number(s) of such Securities to be so withdrawn, if such Securities are in certificated form, (IV) the principal amount of the Securities of such Holder to be so withdrawn, which amount must be \$1,000 or an integral multiple thereof and (V) the principal amount, if any, of the Securities of such Holder that remain subject to the Purchase Notice delivered by such Holder in accordance with this Section 3.08, which amount must be \$1,000 or an integral multiple thereof;

(ix) that on and after the applicable Option Purchase Date (unless there shall be a Default in the payment of the consideration payable as herein provided upon a Purchase at Holder's Option), interest on Securities subject to Purchase at Holder's Option will cease to accrue, and all rights of the Holders of such Securities shall terminate, other than the right to receive, in accordance herewith, the consideration payable as herein provided upon a Purchase at Holder's Option; and

(x) the CUSIP number or numbers, as the case may be, of the Securities.

At the Company's request, upon reasonable prior notice, the Trustee shall mail such Option Purchase Notice in the Company's name and at the Company's expense; *provided, however*, that the form and content of such Option Purchase Notice shall be prepared by the Company.

No failure of the Company to give an Option Purchase Notice shall limit any Holder's right pursuant hereto to exercise its rights to require the Company to purchase such Holder's Securities pursuant to a Purchase at Holder's Option.

(C) Subject to the provisions of this Section 3.08, the Company shall pay, or cause to be paid, the Option Purchase Price, plus accrued and unpaid interest, if any, to, but excluding, the applicable Option Purchase Date, with respect to each Security subject to Purchase at Holder's Option to the Holder thereof as promptly as practicable, but in no event later than the third (3rd) Business Day after the later of the applicable Option Purchase Date and the time such Security (together with all necessary endorsements) is surrendered to the Paying Agent; *provided, however*, that such accrued and unpaid interest shall be paid, on the applicable interest payment date, to the Holder of record of such Security at the close of business on the record date immediately preceding such Option Purchase Date.

(D) Prior to 11:00 A.M., New York City time on the applicable Option Purchase Date, the Company shall deposit with a Paying Agent (or, if the Company is acting as its own Paying Agent, shall have segregated and shall hold in trust in accordance with Section 2.04) money, in funds immediately available on the applicable Option Purchase Date, sufficient to pay the Option Purchase Price, plus accrued and unpaid interest, if any, to, but excluding, such Option Purchase Date, with respect to all of the Securities that are to be purchased by the Company on such Option Purchase Date pursuant to a Purchase at Holder's Option. The Paying Agent shall return to the Company, as soon as practicable, any money not required for that purpose.

(E) Once the Purchase Notice has been duly delivered in accordance with this Section 3.08, the Securities to be purchased pursuant to the Purchase at Holder's Option shall, on the applicable Option Purchase Date, become due and payable in accordance herewith, and, on and after such date (unless there shall be a Default in the payment of the consideration payable as herein provided upon a Purchase at Holder's Option), such Securities shall cease to bear interest, and all rights of the Holders of such Securities shall terminate, other than the right to receive, in accordance herewith, the Option Purchase Price (together with accrued and unpaid interest, if any, payable as provided herein).

(F) Securities with respect to which a Purchase Notice has been duly delivered in accordance with this Section 3.08 may be converted pursuant to Article X, if otherwise convertible in accordance with Article X, only if such Purchase Notice has been withdrawn in accordance with this Section 3.08 or if there shall be a Default in the payment of the consideration payable as herein provided upon a Purchase at Holder's Option.

(G) If any Security subject to Purchase at Holder's Option shall not be paid in accordance herewith, the principal of, and accrued and unpaid interest on, such Security shall, until paid, bear interest, payable in cash, at the rate borne by such Security on the principal amount of such Security, and such Security shall continue to be convertible pursuant to Article X.

(H) Any Security which is to be submitted for Purchase at Holder's Option only in part shall be delivered pursuant to this Section 3.08 (with, if the Company or the Trustee so requires, 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 its attorney duly authorized in writing, with a medallion guarantee), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder, of the same tenor and in aggregate principal amount equal to the portion of such Security not submitted for Purchase at Holder's Option.

(I) Notwithstanding anything herein to the contrary, there shall be no purchase of any Securities pursuant to this Section 3.08 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Purchase Notice) and is continuing an Event of Default (other than a Default in the payment of the consideration payable as herein provided upon a Purchase at Holder's Option or a Default arising from the Company's failure to provide the applicable Option Purchase Notice). The Paying Agent will promptly return to the respective Holders thereof any Securities held by it during the continuance of an Event of Default (other than a Default in the payment of such consideration or arising from the Company's failure to provide the applicable Option Purchase Notice).

Section 3.09 REPURCHASE AT OPTION OF HOLDER UPON A FUNDAMENTAL CHANGE.

(A) In the event any Fundamental Change (as defined below) shall occur, each Holder of Securities shall have the right (the "**Fundamental Change Repurchase Right**"), at such Holder's option, to require the

Company to repurchase all of such Holder's Securities (or portions thereof that are integral multiples of \$1,000 in principal amount), on a date selected by the Company (the "**Fundamental Change Repurchase Date**"), which Fundamental Change Repurchase Date shall be no later than thirty five (35) days, nor earlier than twenty (20) days, after the date the Fundamental Change Notice (as defined below) is mailed in accordance with Section 3.09(B), at a price, payable in cash, equal to one hundred percent (100%) of the principal amount of the Securities (or portions thereof) to be so repurchased (the "**Fundamental Change Repurchase Price**"), plus accrued and unpaid interest, if any, to, but excluding, the Fundamental Change Repurchase Date (*provided, however*, that if such Fundamental Change Repurchase Date is after a record date for the payment of an installment of interest and on or before the related interest payment date, then the accrued and unpaid interest, if any, to, but excluding, such interest payment date will be paid on such interest payment date to the Holder of record of such Securities at the close of business on such record date (without any surrender of such Securities by such Holder), and the Holder surrendering such Securities for repurchase shall receive only the Fundamental Change Repurchase Price and shall not be entitled to any such accrued and unpaid interest unless such Holder was also the Holder of record of such Securities at the close of business on such record date), upon:

(i) delivery to the Company (if it is acting as its own Paying Agent), or to a Paying Agent designated by the Company for such purpose in the Fundamental Change Notice, no later than the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, of a Purchase Notice, in the form set forth in the Securities or any other form of written notice substantially similar thereto, in each case, duly completed and signed, with appropriate signature guarantee, stating:

(a) the certificate number(s) of the Securities which the Holder will deliver to be repurchased, if such Securities are in certificated form;

(b) the principal amount of Securities to be repurchased, which must be \$1,000 or an integral multiple thereof; and

(c) that such principal amount of Securities are to be repurchased pursuant to the terms and conditions specified in paragraph 9 of the Securities and Section 3.09 of this Indenture; and

(ii) delivery to the Company (if it is acting as its own Paying Agent), or to a Paying Agent designated by the Company for such purpose in the Fundamental Change Notice, at any time after the delivery of such Purchase Notice, of such Securities (together with all necessary endorsements) with respect to which the Fundamental Change Repurchase Right is being exercised.

If such Securities are held in book-entry form through the Depository, the Purchase Notice shall comply with applicable procedures of the Depository.

Upon such delivery of Securities to the Company (if it is acting as its own Paying Agent) or such Paying Agent, such Holder shall be entitled to receive, upon request, from the Company or such Paying Agent, as the case may be, a nontransferable receipt of deposit evidencing such delivery.

Notwithstanding anything herein to the contrary, any Holder that has delivered the Purchase Notice contemplated by this Section 3.09(A) to the Company (if it is acting as its own Paying Agent) or to a Paying Agent designated by the Company for such purpose in the Fundamental Change Notice shall have the right to withdraw such Purchase Notice by delivery, at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, of a written notice of withdrawal to the Company (if acting as its own Paying Agent) or the Paying Agent, which notice shall contain the information specified in Section 3.09(B)(xi).

The Paying Agent shall promptly notify the Company of the receipt by it of any Purchase Notice or written notice of withdrawal thereof.

(B) Within twenty (20) Business Days after the occurrence of a Fundamental Change, the Company shall mail, or cause to be mailed, to all Holders of the Securities at their addresses shown in the register of the Registrar, and to beneficial owners as required by applicable law, a notice (the “**Fundamental Change Notice**”) of the occurrence of such Fundamental Change and the Fundamental Change Repurchase Right arising as a result thereof. The Company shall deliver a copy of the Fundamental Change Notice to the Trustee and shall publicly announce, through a reputable national newswire service, and publish on the Company’s website, such Fundamental Change Notice.

Each Fundamental Change Notice shall state:

- (i) the events causing the Fundamental Change;
- (ii) the date of such Fundamental Change;
- (iii) the Fundamental Change Repurchase Date;
- (iv) the date by which the Fundamental Change Repurchase Right must be exercised;
- (v) the Fundamental Change Repurchase Price plus accrued and unpaid interest, if any, to, but excluding, the Fundamental Change Repurchase Date;
- (vi) the names and addresses of the Paying Agent and the Conversion Agent;
- (vii) a description of the procedures which a Holder must follow to exercise the Fundamental Change Repurchase Right;
- (viii) that, in order to exercise the Fundamental Change Repurchase Right, the Securities (together with all necessary endorsements) must be surrendered for payment of the Fundamental Change Repurchase Price plus accrued and unpaid interest, if any, payable as herein provided upon Repurchase Upon Fundamental Change;

(ix) that the Fundamental Change Repurchase Price, plus accrued and unpaid interest, if any, to, but excluding, the Fundamental Change Repurchase Date, for any Security as to which a Purchase Notice has been given and not withdrawn will be paid as promptly as practicable, but in no event more than the third (3rd) Business Day after the later of such Fundamental Change Repurchase Date and the time of delivery of the Security (together with all necessary endorsements) as described in clause (viii) above; *provided, however*, that if such Fundamental Change Repurchase Date is after a record date for the payment of an installment of interest and on or before the related interest payment date, then the accrued and unpaid interest, if any, to, but excluding, such interest payment date will be paid on such interest payment date to the Holder of record of such Security at the close of business on such record date (without any surrender of such Securities by such Holder), and the Holder surrendering such Security for repurchase shall receive only the Fundamental Change Repurchase Price and shall not be entitled to any such accrued and unpaid interest unless such Holder was also the Holder of record of such Security at the close of business on such record date;

(x) that, except as otherwise provided herein with respect to a Fundamental Change Repurchase Date that is after a record date for the payment of an installment of interest and on or before the related interest payment date, on and after such Fundamental Change Repurchase Date (unless there shall be a Default in the payment of the consideration payable as herein provided upon Repurchase Upon Fundamental Change), interest on Securities subject to Repurchase Upon Fundamental Change will cease to accrue, and all rights of the Holders of such Securities shall terminate, other than the right to receive, in accordance herewith, the consideration payable as herein provided upon Repurchase Upon Fundamental Change;

(xi) that a Holder will be entitled to withdraw its election in the Purchase Notice if the Company (if acting as its own Paying Agent), or the Paying Agent receives, prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, or such longer period as may be required by law, a letter or telegram, telex or facsimile transmission (receipt of which is confirmed and promptly followed by a letter) setting forth (I) the name of such Holder, (II) a statement that such Holder is withdrawing its election to have Securities purchased by the Company on such Fundamental Change Repurchase Date pursuant to a Repurchase Upon Fundamental Change, (III) the certificate number(s) of such Securities to be so withdrawn, if such Securities are in certificated form, (IV) the principal amount of the Securities of such Holder to be so withdrawn, which amount must be \$1,000 or an integral multiple thereof and (V) the principal amount, if any, of the Securities of such Holder that remain subject to the Purchase Notice delivered by such Holder in accordance with this Section 3.09, which amount must be \$1,000 or an integral multiple thereof;

(xii) the Conversion Rate and any adjustments to the Conversion Rate that will result from such Fundamental Change;

(xiii) that Securities with respect to which a Purchase Notice is given by a Holder may be converted pursuant to Article X, if otherwise convertible in accordance with Article X, only if such Purchase Notice has been withdrawn in accordance with this Section 3.09 or if there shall be a Default in the payment of the Fundamental Change Repurchase Price or in the accrued and unpaid interest, if any, payable as herein provided upon Repurchase Upon Fundamental Change; and

(xiv) the CUSIP number or numbers, as the case may be, of the Securities.

At the Company's request, upon reasonable prior notice, the Trustee shall mail such Fundamental Change Notice in the Company's name and at the Company's expense; *provided, however*, that the form and content of such Fundamental Change Notice shall be prepared by the Company.

No failure of the Company to give a Fundamental Change Notice shall limit any Holder's right pursuant hereto to exercise a Fundamental Change Repurchase Right.

(C) Subject to the provisions of this Section 3.09, the Company shall pay, or cause to be paid, the Fundamental Change Repurchase Price, plus accrued and unpaid interest, if any, to, but excluding, the Fundamental Change Repurchase Date, with respect to each Security as to which the Fundamental Change Repurchase Right shall have been exercised to the Holder thereof as promptly as practicable, but in no event later than the third (3rd) Business Day after the later of the Fundamental Change Repurchase Date and the time such Security (together with all necessary endorsements) is surrendered to the Paying Agent; *provided, however*, that if such Fundamental Change Repurchase Date is after a record date for the payment of an installment of interest and on or before the related interest payment date, then the accrued and unpaid interest, if any, to, but excluding, such interest payment date will be paid on such interest payment date to the Holder of record of such Security at the close of business on such record date, and the Holder surrendering such Security for repurchase shall receive only the Fundamental Change Repurchase Price and shall not be entitled to any such accrued and unpaid interest unless such Holder was also the Holder of record of such Security at the close of business on such record date.

(D) Prior to 11:00 A.M., New York City time on a Fundamental Change Repurchase Date, the Company shall deposit with a Paying Agent (or, if the Company is acting as its own Paying Agent, shall have segregated and shall hold in trust in accordance with Section 2.04) money, in funds immediately available on the Fundamental Change Repurchase Date, sufficient to pay the consideration payable as herein provided upon Repurchase Upon Fundamental Change with respect to all of the Securities that are to be repurchased by the Company on such Fundamental Change Repurchase Date pursuant to a Repurchase Upon Fundamental Change. The Paying Agent shall return to the Company, as soon as practicable, any money not required for that purpose.

(E) Once the Fundamental Change Notice and the Purchase Notice have been duly given in accordance with this Section 3.09, the Securities to be repurchased pursuant to a Repurchase Upon Fundamental Change shall, on the Fundamental Change Repurchase Date, become due and payable in accordance herewith, and, on and after such date (unless there shall be a Default in the payment of the consideration payable as herein provided

upon Repurchase Upon Fundamental Change), except as otherwise provided herein with respect to a Fundamental Change Repurchase Date that is after a record date for the payment of an installment of interest and on or before the related interest payment date, such Securities shall cease to bear interest, and all rights of the Holders of such Securities shall terminate, other than the right to receive, in accordance herewith, such consideration.

(F) Securities with respect to which a Purchase Notice has been duly delivered in accordance with this Section 3.09 may be converted pursuant to Article X, if otherwise convertible in accordance with Article X, only if such Purchase Notice has been withdrawn in accordance with this Section 3.09 or if there shall be a Default in the payment of the consideration payable as herein provided upon Repurchase Upon Fundamental Change.

(G) If any Security shall not be paid upon surrender thereof for Repurchase Upon Fundamental Change, the principal of, and accrued and unpaid interest on, such Security shall, until paid, bear interest, payable in cash, at the rate borne by such Security on the principal amount of such Security, and such Security shall continue to be convertible pursuant to Article X.

(H) Any Security which is to be submitted for Repurchase Upon Fundamental Change only in part shall be delivered pursuant to this Section 3.09 (with, if the Company or the Trustee so requires, 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 its attorney duly authorized in writing, with a medallion guarantee), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder, of the same tenor and in aggregate principal amount equal to the portion of such Security not duly submitted for Repurchase Upon Fundamental Change.

(I) Notwithstanding anything herein to the contrary, there shall be no purchase of any Securities pursuant to this Section 3.09 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Purchase Notice) and is continuing an Event of Default (other than a Default in the payment of the consideration payable as herein provided upon Repurchase Upon Fundamental Change or a Default arising from the Company's failure to provide the applicable Fundamental Change Notice). The Paying Agent will promptly return to the respective Holders thereof any Securities held by it during the continuance of an Event of Default (other than a Default in the payment of such consideration or arising from the Company's failure to provide the applicable Fundamental Change Notice).

(J) As used herein and in the Securities, a "**Fundamental Change**" shall be deemed to have occurred upon the occurrence of either a "Change in Control" or a "Termination of Trading."

(i) A "**Change in Control**" shall be deemed to have occurred at such time as:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as such term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the total outstanding voting power of the Company's Voting Stock (such an event, an "**Acquisition of Voting Control**"); or

(b) there occurs a sale, transfer, lease, conveyance or other disposition of all or substantially all of the property or assets of the Company to any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act; or

(c) the Company consolidates with, or merges with or into, another person or any person consolidates with, or merges with or into, the Company, unless either:

(1) the persons that "beneficially owned" (as such term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, the

shares of the Company's Voting Stock immediately prior to such consolidation or merger "beneficially own," directly or indirectly, immediately after such consolidation or merger, shares of the surviving or continuing corporation's Voting Stock representing at least a majority of the total outstanding voting power of all outstanding classes of the Voting Stock of the surviving or continuing corporation in substantially the same proportion as such ownership immediately prior to such consolidation or merger; or

(2) both of the following conditions are satisfied (a transaction that satisfies both of the conditions set forth in this clause (2), a "**Listed Stock Business Combination**"): (x) at least ninety percent (90%) of the consideration (other than cash payments for fractional shares or pursuant to statutory appraisal rights) in such consolidation or merger consists of common stock and any associated rights traded on a U.S. national securities exchange or quoted on the Nasdaq Global Select Market (or which will be so traded or quoted when issued or exchanged in connection with such consolidation or merger), and, (y) as a result of such consolidation or merger, the Securities become convertible into cash and the Daily Share Amount, if any, which shall be payable at our option in cash, shares of such common stock and associated rights or a combination thereof; or

(d) the following persons cease for any reason to constitute a majority of the Board of Directors:

(1) individuals who on the Issue Date constituted the Board of Directors; and

(2) any new directors whose election to the Board of Directors or whose nomination for election by the Company's shareholders was approved by at least a majority of the directors of the Company then still in office either who were directors of the Company on the Issue Date or whose election or nomination for election was previously so approved; or

(e) the Company is liquidated or dissolved or the holders of the Company's Capital Stock approve any plan or proposal for the liquidation or dissolution of the Company.

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

ARTICLE IV.

COVENANTS

Section 4.01 PAYMENT OF SECURITIES.

The Company shall pay all amounts due with respect to the Securities on the dates and in the manner provided in the Securities and this Indenture. All such amounts shall be considered paid on the date due if the Paying Agent holds (or, if the Company is acting as Paying Agent, the Company has segregated and holds in trust in accordance with Section 2.04) on that date money sufficient to pay the amount then due with respect to the Securities (unless there shall be a Default in the payment of such amounts to the respective Holder(s)). The

Company will pay, in money of the United States that at the time of payment is legal tender for payment of public and private debts, all amounts due in cash with respect to the Securities, which amounts shall be paid (A) in the case of a Security that is in global form, by wire transfer of immediately available funds to the account designated by the Depository or its nominee; (B) in the case of a Security that is held, other than global form, by a Holder of more than five million dollars (\$5,000,000) in aggregate principal amount of Securities, by wire transfer of immediately available funds to the account specified by such Holder or, if such Holder does not specify an account, by mailing a check to the address of such Holder set forth in the register of the Registrar; and (C) in the case of a Security that is held, other than global form, by a Holder of five million dollars (\$5,000,000) or less in aggregate principal amount of Securities, by mailing a check to the address of such Holder set forth in the register of the Registrar.

The Company shall pay, in cash, interest on any overdue amount (including, to the extent permitted by applicable law, overdue interest) at the rate borne by the Securities.

Section 4.02 MAINTENANCE OF OFFICE OR AGENCY.

The Company shall maintain, or cause to be maintained, in the Borough of Manhattan, the City of New York, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-Registrar) where Securities may be surrendered for registration of transfer or exchange, payment or conversion. 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, or fail to cause to maintain, any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders may be made or served at the applicable Corporate Trust Office of the Trustee. The Company shall maintain, or cause to be maintained, in the Borough of Manhattan, the City of New York, an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served, provided that such office or agency may instead be at the principal office of the Company located in the United States.

The Company may also from time to time designate one or more other offices or agencies where the Securities 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 the Borough of Manhattan, the City of New York for such purposes. The Company shall 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.

The Company hereby designates the Corporate Trust Office of the Trustee as an agency of the Company in accordance with Section 2.03.

Section 4.03 ANNUAL REPORTS.

The Company shall comply with the provisions of TIA § 314(a), including but not limited to, furnishing to the Trustee copies of the Company's annual report to shareholders, containing audited financial statements and any other financial reports the Company furnishes to its shareholders.

Section 4.04 COMPLIANCE CERTIFICATE.

The Company shall deliver to the Trustee, within ninety (90) calendar days after the end of each fiscal year of the Company, or, if earlier, by the date the Company is, or would be, required to file with the SEC the Company's annual report (whether on Form 10-K under the Exchange Act or another appropriate form) for such fiscal year, certificate of two (2) or more Officers, in the form required by Section 14.05 stating whether or not the signatories to such certificate have actual knowledge of any Default or Event of Default by the Company in performing any of its obligations under this Indenture or the Securities. If such signatories do know of any such Default or Event of Default, then such certificate shall describe the Default or Event of Default and its status.

Section 4.05 STAY, EXTENSION AND USURY LAWS.

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

Section 4.06 CORPORATE EXISTENCE.

Subject to Article V, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate existence of each of its Subsidiaries, in accordance with the respective organizational documents of the Company and of each Subsidiary, and the rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries; *provided, however*, that the Company shall not be required to preserve any such right, license or franchise, or the corporate existence of any Subsidiary, if in the good faith judgment of the Board of Directors (i) such preservation or existence is not material to the conduct of business of the Company and (ii) the loss of such right, license or franchise or the dissolution of such Subsidiary does not have a material adverse impact on the Holders.

Section 4.07 NOTICE OF DEFAULT.

Upon the Company becoming aware of the occurrence of any Default or Event of Default, the Company shall give prompt written notice of such Default or Event of Default, and any remedial action proposed to be taken, to the Trustee.

Section 4.08 LIMITATION ON LAYERING.

The Company shall not incur any Indebtedness that is contractually senior in right of payment to the Securities and contractually subordinate in right of payment to any other Indebtedness of the Company. No Guarantor shall incur any Indebtedness that is contractually senior in right of payment to the Guarantee of such Guarantor and contractually subordinate in right of payment to any other Indebtedness of such Guarantor.

Section 4.09 FURTHER INSTRUMENTS AND ACTS.

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

Section 4.10 PAYMENT OF TAXES AND OTHER CLAIMS.

The Company shall pay or discharge, or cause to be paid or discharged, before the same may become delinquent, all taxes, assessments, and governmental charges required to be paid by the Company or any Significant Subsidiary and all stamp taxes and other duties, if any, which may be imposed by the United States or any political subdivision thereof or therein in connection with the issuance, transfer, exchange, conversion, redemption or repurchase of any Notes or with respect to this Indenture; *provided* that, the Company, or the relevant Significant Subsidiary, shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, or charge if the amount, applicability or validity is being contested in good faith by appropriate proceedings.

Section 4.11 LIMITATIONS ON EXISTING NON-GUARANTOR SUBSIDIARIES

The Company covenants that for so long as any Securities are outstanding the Existing Non-Operating Subsidiaries, individually or in the aggregate, shall not have any material operations or conduct any material business and shall not have any assets except for the assets that such Existing Non-Operating Subsidiary has on the Issue Date.

Section 4.12 LIMITATIONS OF ISSUANCES OF GUARANTEES OF SENIOR SUBORDINATED INDEBTEDNESS

(A) If any Subsidiary formed or acquired after the Issue Date shall guarantee the Company's 7.75% Senior Subordinated Notes due 2012 or any other senior subordinated Indebtedness of the Company ("**Guaranteed Indebtedness**"), then such Subsidiary shall (i) execute and deliver to the Trustee a supplemental indenture substantially in form included in Exhibit D hereto pursuant to which such Subsidiary shall unconditionally guarantee all of the Company's Obligations under the Securities and this Indenture, (ii) execute and deliver to the Trustee a Guarantee in accordance with Section 12.01 and (iii) upon the Trustee's written request, deliver to the Trustee an Opinion of Counsel that, subject to customary qualifications such supplemental indenture has been duly authorized, executed and delivered by such Subsidiary and constitutes a legal, valid, binding and enforceable obligation of such Subsidiary. In addition, the Company may, at its option, cause any Subsidiary to guarantee all of the Company's Obligations under the Securities and this Indenture.

(B) Notwithstanding the foregoing, any guarantee by a Subsidiary may provide by its terms that it shall be automatically and unconditionally released and discharged (i) upon any sale or other disposition of that Guarantor or all of substantially all of the assets of that Guarantor (including by way of merger or consolidation or any sale of all of the Capital Stock of that Guarantor) to a Person that is not the Company or a Subsidiary of the Company; and (ii) at such time as such Guarantor's guarantee of such Guaranteed Indebtedness is released or discharged, or at the Company's option, if the Guarantor is not a guarantor of the Company's 7.75% Senior Subordinated Notes due 2012 or any other senior subordinated Indebtedness of the Company.

ARTICLE V.

SUCCESSORS

Section 5.01 WHEN COMPANY MAY MERGE, ETC.

The Company shall not consolidate with, or merge with or into, or sell, transfer, lease, convey or otherwise dispose of all or substantially all of the property or assets of the Company to, another person, whether in a single transaction or series of related transactions, unless (i) such other person is a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia; (ii) such person assumes by supplemental indenture all the obligations of the Company under the Securities and this Indenture; and (iii) immediately after giving effect to such transaction or series of transactions, no Default or Event of Default shall exist.

The Company shall deliver to the Trustee prior to the consummation of the proposed transaction an Officer's Certificate to the foregoing effect and an Opinion of Counsel (which may rely upon such Officer's Certificate as to the absence of Defaults and Events of Default) stating that the proposed transaction and such supplemental indenture will, upon consummation of the proposed transaction, comply with this Indenture.

Section 5.02 SUCCESSOR SUBSTITUTED.

Upon any consolidation, merger or any sale, transfer, lease, conveyance or other disposition of all or substantially all of the property or assets of the Company, the successor person formed by such consolidation or into which the Company is merged or to which such sale, transfer, lease, conveyance or other disposition is made shall succeed to, and, except in the case of a lease, be substituted for, and may exercise every right and power of, and shall assume every duty and obligation of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein. When the successor assumes all obligations of the Company hereunder, except in the case of a lease, all obligations of the predecessor shall terminate.

ARTICLE VI.

DEFAULTS AND REMEDIES

Section 6.01 EVENTS OF DEFAULT.

An “Event of Default” occurs if:

(i) the Company fails to pay the principal of, or premium, if any, on, any Security when the same becomes due and payable, whether at maturity, upon Redemption, on an Option Purchase Date with respect to a Purchase at Holder’s Option, on a Fundamental Change Repurchase Date with respect to a Repurchase Upon Fundamental Change or otherwise;

(ii) the Company fails to pay an installment of interest (including, without limitation, Contingent Interest if any) on any Security when due, if such failure continues for thirty (30) days after the date when due;

(iii) the Company fails to satisfy its conversion obligations upon exercise of a Holder’s conversion rights pursuant hereto;

(iv) the Company fails to timely provide a Fundamental Change Notice or an Option Purchase Notice, as required by the provisions of this Indenture, or fails to timely provide any notice pursuant to, and in accordance with, Section 10.14(D);

(v) the Company or any Guarantor fails to comply with any other term, covenant or agreement set forth in the Securities or this Indenture and such failure continues for the period, and after the notice, specified below;

(vi) the Company or any of its Subsidiaries defaults in the payment when due, after the expiration of any applicable grace period, of principal of, or premium, if any, or interest on, Indebtedness for money borrowed, in the aggregate principal amount then outstanding of twenty-five million dollars (\$25,000,000) or more, or the acceleration of Indebtedness of the Company or any of its Subsidiaries for money borrowed in such aggregate principal amount or more so that it becomes due and payable prior to the date on which it would otherwise become due and payable and such default is not cured or waived, or such acceleration is not rescinded, within sixty (60) days after notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least twenty five percent (25%) in the aggregate principal amount of the Securities then outstanding, each in accordance with this Indenture;

(vii) the Company or any of its Subsidiaries fails, within sixty (60) days, to pay, bond or otherwise discharge any judgments or orders for the payment of money the total uninsured amount of which for the Company or any of its Subsidiaries exceeds twenty-five million dollars (\$25,000,000), which are not stayed on appeal;

(viii) any Guarantee of a Guarantor ceases to be in full force and effect or becomes unenforceable or invalid or is declared null and void (other than in accordance with the terms of the Guarantee and this Indenture) or any Guarantor denies or disaffirms its obligations under its Guarantee;

(ix) the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company, pursuant to, or within the meaning of, any Bankruptcy Law, insolvency law, or other similar law now or hereafter in effect or otherwise, either:

(a) commences a voluntary case,

(b) consents to the entry of an order for relief against it in an involuntary case,

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

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

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

(a) is for relief against the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company in an involuntary case or proceeding, or adjudicates the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company insolvent or bankrupt,

(b) appoints a Custodian of the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company for all or substantially all of the property of the Company or any such Significant Subsidiary or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company, as the case may be, or

(c) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company,

and, in the case of each of the foregoing clauses (a), (b) and (c) of this Section 6.01(x), the order or decree remains unstayed and in effect for at least ninety (90) consecutive days.

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

A Default under clause (v) above is not an Event of Default until (I) the Trustee notifies the Company, or the Holders of at least twenty five percent (25%) in aggregate principal amount of the Securities then outstanding notify the Company and the Trustee in writing, of the Default and (II) the Default is not cured within sixty (60) days after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that the notice is a “**Notice of Default.**” If the Holders of at least twenty five percent (25%) in aggregate principal amount of the outstanding Securities request the Trustee to give such notice on their behalf, the Trustee shall do so. When a Default is cured, it ceases to exist for all purposes under this Indenture.

Section 6.02 ACCELERATION.

If an Event of Default (excluding an Event of Default specified in Section 6.01(ix) or (x) with respect to the Company (but including an Event of Default specified in Section 6.01(ix) or (x) solely with respect to a Significant Subsidiary of the Company or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company)) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least twenty five percent (25%) in aggregate principal amount of the Securities then outstanding by notice to the Company and the Trustee, may declare the Securities to be immediately due and payable in full. Upon such declaration, the principal of, and any accrued and unpaid interest (including any Contingent Interest and additional interest) on, all Securities shall be due and payable immediately. If an Event of Default specified in Section 6.01(ix) or (x) with respect to the Company (excluding, for purposes of this sentence, an Event of Default specified in Section 6.01(ix) or (x) solely with respect to a Significant Subsidiary of the Company or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company) occurs, the principal of, and accrued and unpaid interest (including, without limitation, any Contingent Interest) on, all the Securities shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. The Holders of a majority in aggregate principal amount of the Securities then outstanding by written notice

to the Trustee may rescind or annul an acceleration and its consequences if (A) the rescission would not conflict with any order or decree, (B) all existing Events of Default, except the nonpayment of principal or interest (including, without limitation, Contingent Interest) that has become due solely because of the acceleration, have been cured or waived and (C) all amounts due to the Trustee under Section 7.07 have been paid.

Section 6.03 OTHER REMEDIES.

Notwithstanding any other provision of this Indenture, if an Event of Default occurs and is continuing, and a Responsible Officer of the Trustee has actual knowledge of such Event of Default, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of amounts due with respect to the Securities or to enforce the performance of any provision of the Securities or this Indenture.

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

Section 6.04 WAIVER OF PAST DEFAULTS.

Subject to Sections 6.07 and 9.02, the Holders of a majority in aggregate principal amount of the Securities then outstanding may, by notice to the Trustee, waive any past Default or Event of Default and its consequences, other than (A) a Default or Event of Default in the payment of the principal of, or premium, if any, or interest (including without limitation Contingent Interest, if any) on any Security, or in the payment of the Redemption Price, the Option Purchase Price or the Fundamental Change Repurchase Price (or accrued and unpaid interest, if any, payable as herein provided, upon Redemption, Purchase at Holder's Option or Repurchase Upon Fundamental Change), (B) a Default or Event of Default arising from a failure by the Company to convert any Securities in accordance with this Indenture or (C) any Default or Event of Default in respect of any provision of this Indenture or the Securities which, under Section 9.02, cannot be modified or amended without the consent of the Holder of each outstanding Security affected. When a Default or an Event of Default is waived, it is cured and ceases to exist for all purposes under this Indenture. This Section 6.04 shall be in lieu of TIA § 316(a)(1)(B), and, as permitted by the TIA, TIA § 316(a)(1)(B) is hereby expressly excluded from this Indenture.

Section 6.05 CONTROL BY MAJORITY.

The Holders of a majority in aggregate principal amount of the Securities then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, is unduly prejudicial to the rights of other Holders or would involve the Trustee in personal liability unless the Trustee is offered indemnity reasonably satisfactory to it; *provided*, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction. This Section 6.05 shall be in lieu of TIA § 316(a)(1)(A), and, as permitted by the TIA, TIA § 316(a)(1)(A) is hereby expressly excluded from this Indenture.

Section 6.06 LIMITATION ON SUITS.

Except as provided in Section 6.07, a Securityholder may not institute any proceeding under this Indenture, or for the appointment of a receiver or a trustee, or for any other remedy under this Indenture unless:

- (i) the Holder gives to the Trustee written notice of a continuing Event of Default;
- (ii) the Holders of at least twenty five percent (25%) in aggregate principal amount of the Securities then outstanding make a written request to the Trustee to pursue the remedy;

(iii) such Holder or Holders offer and, if requested, provide to the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense to or of the Trustee in connection with pursuing such remedy;

(iv) the Trustee does not comply with the request within sixty (60) days after receipt of such notice, request and offer of indemnity; and

(v) during such sixty (60) day period, the Holders of a majority in aggregate principal amount of the Securities then outstanding do not give the Trustee a direction inconsistent with the request.

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

Section 6.07 RIGHTS OF HOLDERS TO RECEIVE PAYMENT.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of all amounts due with respect to the Securities, on or after the respective due dates as provided herein, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of the Holder.

Notwithstanding any other provision of this Indenture, the right of any Holder to convert the Security in accordance with this Indenture, or to bring suit for the enforcement of such right, shall not be impaired or affected without the consent of the Holder.

Section 6.08 COLLECTION SUIT BY TRUSTEE.

If an Event of Default specified in Section 6.01(i) or (ii) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount due with respect to the Securities, including any unpaid and accrued interest and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensate expenses, disbursements and advances of the Trustee; its agents and counsel.

Section 6.09 TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee, any predecessor Trustee and the Securityholders allowed in any judicial proceedings relative to the Company or its creditors or properties.

The Trustee may 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 similar official in any 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 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 7.07.

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

Section 6.10 PRIORITIES.

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

- First: to the Trustee for amounts due under Section 7.07;
- Second: to Securityholders for all amounts due and unpaid on the Securities, without preference or priority of any kind, according to the amounts due and payable on the Securities; and
- Third: the balance, if any, to the Company.

The Trustee, upon prior written notice to the Company, may fix a record date and payment date for any payment by it to Securityholders pursuant to this Section 6.10. At least fifteen (15) days before each such record date, the Trustee shall mail to each Holder and the Company a written notice that states such record date and payment date and the amount of such payment.

Section 6.11 UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit other than the Trustee of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than ten percent (10%) in aggregate principal amount of the outstanding Securities.

ARTICLE VII.

TRUSTEE

Section 7.01 DUTIES OF TRUSTEE.

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

(B) The Trustee, except during the continuance of an Event of Default:

(i) need perform only those duties that are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith, willful misconduct or negligence on its part, 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 examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(C) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

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

(ii) the Trustee shall be not liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(D) Every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this Section 7.01.

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

Section 7.02 RIGHTS OF TRUSTEE.

(A) Subject to Section 7.01, the Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document; if, however, the Trustee shall determine to make such further inquiry or investigation, it shall be entitled during normal business hours of the Company to examine the relevant books, records and premises of the Company, personally or by agent or attorney upon reasonable prior notice.

(B) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. No such Officer's Certificate or Opinion of Counsel shall be at the expense of the Trustee.

(C) 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 shall be sufficiently evidenced by a Board Resolution.

(D) The Trustee may consult with counsel, and the 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.

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

(F) The Trustee shall not be liable for any action it takes, suffers or omits to take in good faith which it believes to be authorized or within its discretion, rights or powers conferred upon it by this Indenture.

(G) The Trustee (except with respect to Section 6.01) shall not have any duty to inquire as to the performance of the Company with respect to the covenants contained in Article IV. In addition, the Trustee shall not be deemed to have knowledge of a Default, Event of Default, Fundamental Change, Make-Whole Fundamental Change or Public Acquirer Fundamental Change except any Default, Event of Default, Fundamental Change, Make-Whole Fundamental Change or Public Acquirer Fundamental Change of which a Responsible Officer of the Trustee shall have received written notification or obtained actual knowledge. Except as otherwise provided herein, the Trustee may, in the absence of such actual knowledge or receipt of such written notification, conclusively assume that there is no Default, Event of Default, Fundamental Change, Make-Whole Fundamental Change or Public Acquirer Fundamental Change. Delivery of reports, information and documents to the Trustee under Article IV (other than Sections 4.04 and 4.07) is for informational purposes only and the receipt by the Trustee of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which each of the Trustee is entitled to rely on Officer's Certificates).

(H) The Trustee shall not be under any obligation to exercise any of the rights or powers vested by this Indenture at the request or direction of any of the Holders pursuant to this Indenture unless such Holders shall have offered to the Trustee, security or indemnity reasonably satisfactory to the Trustee, as applicable, against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

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

(J) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(K) The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability for the performance of any of its duties hereunder or the exercise of any of its rights or powers if there is reasonable ground for believing that the repayment of such funds or reasonably adequate indemnity against such risk or liability is not assured to it.

(L) The Trustee shall not have any duty (i) to see to any recording, filing or depositing of this Indenture or any Indenture referred to herein or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, refiling or redepositing of any thereof or (ii) to see to any insurance.

(M) The rights of the Trustee to perform any discretionary act enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable other than for its negligence or willful misconduct in the performance of such act.

(N) The Trustee shall not be required to give any bond or surety in respect of the execution of the powers granted hereunder.

Section 7.03 INDIVIDUAL RIGHTS OF TRUSTEE.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any of its Affiliates with the same rights the Trustee would have if it were not Trustee. The Trustee, however, must comply with Sections 7.10 and 7.11.

Section 7.04 DISCLAIMER OF THE TRUSTEE.

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

Section 7.05 NOTICE OF DEFAULTS.

If a Default or Event of Default occurs and is continuing as to which the Trustee has received notice pursuant to the provisions of this Indenture, or as to which a Responsible Officer of the Trustee shall have actual knowledge, then the Trustee shall mail to each Holder a notice of the Default or Event of Default within thirty (30) days after receipt of such notice or after acquiring such knowledge, as applicable, unless such Default or Event of Default has been cured or waived; *provided, however*, that, except in the case of a Default or Event of Default in payment of any amounts due with respect to any Security, the Trustee may withhold such notice if, and so long as it in good faith determines that, withholding such notice is in the best interests of Holders.

Section 7.06 REPORTS BY TRUSTEE TO HOLDERS.

Within sixty (60) days after each May 15, beginning with May 15, 2007, the Trustee shall mail to each Securityholder if required by TIA § 313(a) a brief report dated as of such May 15 that complies with TIA § 313(c). In such event, the Trustee also shall comply with TIA § 313(b) and TIA § 313(d).

A copy of each report at the time of its mailing to Securityholders shall be mailed by first class mail to the Company and filed by the Trustee with the SEC and each stock exchange, if any, on which the Securities are listed. The Company shall promptly notify the Trustee of the listing or delisting of the Securities on or from any stock exchange.

Section 7.07 COMPENSATION AND INDEMNITY.

The Company shall pay to the Trustee from time to time such compensation for its services as shall be agreed upon in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred by them pursuant to, and in accordance with, any provision hereof. Such expenses shall include the reasonable compensation and out-of-pocket expenses of the agents and counsel of the Trustee.

The Company shall indemnify the Trustee and any of its officers, directors, employees, representatives and agents against any and all loss, liability, damage, claim or expense (including the reasonable fees and expenses of counsel and taxes other than those based upon the income of the Trustee) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the reasonable costs and expenses of defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers and duties hereunder. The Company need not pay any settlement made without its consent, which consent shall not be unreasonably withheld or delayed. The Trustee shall notify the Company promptly of any claim for which it may seek indemnification. The Company need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee through the negligence, bad faith or willful misconduct of the Trustee.

Notwithstanding anything herein to the contrary, to the extent permitted by the TIA, in no event shall the Trustee be liable for special, indirect or consequential losses or damages of any kind whatsoever (including, without limitation, lost profits), even if the Trustee has been advised of the likelihood of such losses or damages and regardless of the form of action.

To secure the Company's payment obligations in this Section 7.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay amounts due on particular Securities.

The indemnity obligations of the Company with respect to the Trustee provided for in this Section 7.07 shall survive any resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(viii) or (ix) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.08 REPLACEMENT OF TRUSTEE.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon such successor's acceptance of appointment as provided in this Section 7.08.

The Trustee may resign by so notifying the Company in writing thirty (30) Business Days prior to such resignation. The Holders of a majority in aggregate principal amount of the Securities then outstanding may remove the Trustee by so notifying the Trustee and the Company in writing and may appoint a successor Trustee with the Company's consent. The Company may remove the Trustee if:

- (i) the Trustee fails to comply with Section 7.10;
- (ii) the Trustee is adjudged a bankrupt or an insolvent;
- (iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee, for any reason, the Company shall promptly appoint a successor Trustee.

If a successor Trustee does not take office within thirty (30) days after the retiring Trustee resigns or is removed, the retiring Trustee may, at the Company's expense, and the Company or the Holders of at least ten percent (10%) in aggregate principal amount of the outstanding Securities may, petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, the Company or any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Each successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Securityholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee subject to the lien provided for in Section 7.07.

Section 7.09 SUCCESSOR TRUSTEE BY MERGER, ETC.

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee if such successor corporation is otherwise eligible hereunder.

Section 7.10 ELIGIBILITY; DISQUALIFICATION.

There shall at all times be a Trustee hereunder, which (A) is an entity organized and doing business under the laws of the United States of America or of any state thereof, (B) is authorized under such laws to exercise corporate trustee power, (C) is subject to supervision or examination by federal or state authorities and (D) has a combined capital and surplus of at least \$50 million as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b). Nothing in this Indenture shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA § 310(b).

Section 7.11 PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

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

ARTICLE VIII.

DISCHARGE OF INDENTURE

Section 8.01 TERMINATION OF THE OBLIGATIONS OF THE COMPANY.

This Indenture and the Guarantees (if any), shall cease to be of further effect if (a) either (i) all outstanding Securities (other than Securities replaced pursuant to Section 2.07 hereof) have been delivered to the Trustee for cancellation or (ii) all outstanding Securities have become due and payable at their scheduled maturity or upon Purchase at Holder's Option, Redemption or Repurchase Upon Fundamental Change, and in either case the Company irrevocably deposits, prior to the applicable due date, with the Paying Agent (if the Paying Agent is not the Company or any of its Affiliates) cash in money of the United States that at the time of payment is legal tender for payment of public and private debts, sufficient to pay all amounts due and owing on all outstanding Securities (other than Securities replaced pursuant to Section 2.07 hereof) on the Maturity Date or an Option Purchase Date, Redemption Date or Fundamental Change Repurchase Date, as the case may be; (b) the Company pays to the Trustee all other sums payable hereunder by the Company; (c) no Default or Event of Default with respect to the

Securities shall exist on the date of such deposit; (d) such deposit will not result in a breach or violation of, or constitute a Default or Event of Default under, this Indenture; and (e) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for herein relating to the satisfaction and discharge of this Indenture have been complied with; *provided, however*, that Sections 2.02, 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 2.10, 2.11, 2.12, 2.15, 2.16, 2.17, 3.05, 3.08, 3.09, 4.01, 4.02, 4.05, 4.06, 7.07 and 7.08 and Articles VIII, X, XI and XII shall survive any discharge of this Indenture until such time as the Securities have been paid in full and there are no Securities outstanding.

Section 8.02 APPLICATION OF TRUST MONEY.

The Trustee or Paying Agent, as applicable, shall hold in trust all money deposited with it pursuant to Section 8.01 and shall apply such deposited money through the Paying Agent and in accordance with this Indenture, subject to Article XI, to the payment of amounts due on the Securities.

Section 8.03 REPAYMENT TO COMPANY.

The Trustee and the Paying Agent shall promptly notify the Company of, and pay to the Company upon the request of the Company, any excess money held by them at any time. The Trustee or the Paying Agent, as the case may be, shall provide written notice to the Company of any money that has been held by it and has, for a period of two (2) years, remained unclaimed for the payment of the principal of, or any accrued and unpaid interest on, the Securities. The Trustee and the Paying Agent shall pay to the Company upon the written request of the Company any money held by them for the payment of the principal of, premium, if any, or any accrued and unpaid interest or Contingent Interest on, the notes that remains unclaimed for two (2) years; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may (in no event later than five (5) days after the Company requests repayment pursuant to this Section 8.03), at the expense of the Company, cause to be published once in a newspaper of general circulation in the City of New York or cause to be mailed to each Holder, notice stating that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication or mailing, any unclaimed balance of such money then remaining will be repaid to the Company. After payment to the Company, Securityholders entitled to the money must look to the Company for payment as general creditors, subject to applicable law, and all liability of the Trustee and the Paying Agent with respect to such money and payment shall, subject to applicable law, cease.

Section 8.04 REINSTATEMENT.

If the Trustee or Paying Agent is unable to apply any money in accordance with Sections 8.01 and 8.02 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company and the Guarantors, if any, under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Sections 8.01 and 8.02 until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Sections 8.01 and 8.02; *provided, however*, that if the Company has made any payment of amounts due with respect to any Securities because of the reinstatement of its obligations, then the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE IX.

AMENDMENTS

Section 9.01 WITHOUT CONSENT OF HOLDERS.

The Company, with the consent of the Trustee may amend or supplement this Indenture or the Securities without notice to or the consent of any Securityholder:

(i) to comply with Section 10.11 and, in accordance with Section 10.14(E), to give effect to an election, pursuant to such Section 10.14(E), by the Company to make an Acquirer Stock Conversion Right Adjustment with respect to a Public Acquirer Fundamental Change;

(ii) to make adjustments in accordance with this Indenture to the right to convert the Securities upon certain reclassifications or changes in the Common Stock and certain consolidation mergers and binding share exchanges upon the sale, transfer, lease, conveyance or other disposition of all or substantially all the Company's property or assets.

(iii) to secure the obligations of the Company in respect of the Securities;

(iv) to add to the covenants of the Company described in this Indenture for the benefit of Securityholders or to surrender any right or power conferred upon the Company;

(v) to make provisions with respect to adjustments to the Conversion Rate as required by this Indenture or to increase the Conversion Rate in accordance with this Indenture;

(vi) to evidence the assumption of the Company's or any Guarantor's Obligations under this Indenture, the Securities or any Guarantees, as the case may be, by a successor upon the Company's or any Guarantor's consolidation or merger or the sale, transfer, lease, conveyance or other disposition of all or substantially all of the Company's or any Guarantor's property or assets in accordance with this Indenture; and

(vii) to evidence the release of any Guarantor permitted to be released under the terms of this Indenture or to evidence the addition of any new Guarantor.

In addition, the Company and the Trustee may enter into a supplemental indenture without the consent of Holders of the Securities to cure any ambiguity, defect, omission or inconsistency in this Indenture in a manner that does not, individually or in the aggregate with all other modifications made or to be made to the Indenture, adversely affect the rights of any Holder in any material respect.

Section 9.02 WITH CONSENT OF HOLDERS.

The Company, with the consent of the Trustee may amend or supplement this Indenture or the Securities without notice to any Securityholder but with the written consent of the Holders of at least a majority in aggregate principal amount of the outstanding Securities. Subject to Sections 6.04 and 6.07, the Holders of a majority in aggregate principal amount of the outstanding Securities may, by notice to the Trustee, waive compliance by the Company with any provision of this Indenture or the Securities without notice to any other Securityholder. Notwithstanding anything herein to the contrary, without the consent of each Holder of each outstanding Security affected, an amendment, supplement or waiver, including a waiver pursuant to Section 6.04, may not:

(a) change the stated maturity of the principal of, or the payment date of any installment of interest (including Contingent Interest, if any) on, any Security;

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

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

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

(e) modify, in a manner adverse to Holders, the provisions with respect to the right of Holders pursuant to Article III to require the Company to purchase Securities on an Option Purchase Date or to repurchase Securities upon the occurrence of a Fundamental Change;

- (f) modify the provisions of Section 2.18 or Article XI in a manner adverse to Holders;
- (g) adversely affect the right of Holders to convert Securities in accordance with Article X;
- (h) release any Guarantor from any of its Obligations under such Guarantor's Guarantee or this Indenture, other than as permitted by this Indenture;
- (i) reduce the percentage of the aggregate principal amount of the outstanding Securities whose Holders must consent to a modification to or amendment of any provision of this Indenture or the Securities;
- (j) reduce the percentage of the aggregate principal amount of the outstanding Securities whose Holders must consent to a waiver of compliance with any provision of this Indenture or the Securities or a waiver of any Default or Event of Default; or
- (k) modify the provisions of this Indenture with respect to modification and waiver (including waiver of a Default or an Event of Default), except to increase the percentage required for modification or waiver or to provide for consent of each affected Holder.

Promptly after an amendment, supplement or waiver under Section 9.01 or this Section 9.02 becomes effective, the Company shall mail, or cause to be mailed, to Securityholders a notice briefly describing such amendment, supplement or waiver. Any failure of the Company to mail such notice shall not in any way impair or affect the validity of such amendment, supplement or waiver.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

Section 9.03 COMPLIANCE WITH TRUST INDENTURE ACT.

Every amendment, waiver or supplement to this Indenture or the Securities shall comply with the TIA as then in effect.

Section 9.04 REVOCATION AND EFFECT OF CONSENTS.

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

After an amendment, supplement or waiver becomes effective with respect to the Securities, it shall bind every Holder unless such amendment, supplement or waiver makes a change that requires, pursuant to Section 9.02, the consent of each Holder affected. In that case, the amendment, supplement or waiver shall bind each Holder of a Security who has consented to it and, provided that notice of such amendment, supplement or waiver is reflected on a Security that evidences the same debt as the consenting Holder's Security, every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

Nothing in this Section 9.04 shall impair the Company's rights pursuant Section 9.01 to amend this Indenture or the Securities without the consent of any Securityholder in the manner set forth in, and permitted by, such Section 9.01.

Section 9.05 NOTATION ON OR EXCHANGE OF SECURITIES.

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

Section 9.06 TRUSTEE PROTECTED.

The Trustee shall sign any amendment, supplemental indenture or waiver authorized pursuant to this Article IX; *provided, however*, that the Trustee need not sign any amendment, supplement or waiver authorized pursuant to this Article IX that adversely affects the rights, duties, liabilities or immunities of the Trustee. The Trustee shall be entitled to receive and conclusively rely upon an Opinion of Counsel as to legal matters and an Officer's Certificate as to factual matters that any supplemental indenture, amendment or waiver is permitted or authorized pursuant to this Indenture.

Section 9.07 EFFECT OF SUPPLEMENTAL INDENTURES.

Upon the due execution and delivery of any supplemental indenture in accordance with this Article IX, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes, and, except as set forth in Sections 9.02 and 9.04, every Holder of Securities shall be bound thereby.

ARTICLE X.

CONVERSION

Section 10.01 CONVERSION PRIVILEGE; RESTRICTIVE LEGENDS.

(A) Subject to the provisions of Article III, the Securities shall be convertible into cash or, at the Company's option, cash and shares of Common Stock in accordance with this Article X and as set forth below if any of the following conditions are satisfied:

(i) *Conversion Based on Closing Sale Price of Common Stock.* The Securities may be surrendered for conversion into cash or, at the Company's option, cash and shares of Common Stock on any Business Day of a calendar quarter after the calendar quarter ending September 30, 2006, if the Closing Sale Price for each of twenty (20) or more Trading Days in a period of thirty (30) consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter exceeds one hundred and twenty percent (120%) of the Conversion Price in effect on the last Trading Day of the immediately preceding calendar quarter. Solely for purposes of determining whether the Securities shall have become convertible pursuant to this Section 10.01(A)(i), the Board of Directors shall, in its good faith determination, which shall be described in a Board Resolution, make appropriate adjustments to the Closing Sale Prices and/or such Conversion Price used to determine whether the Securities shall have become convertible pursuant to this Section 10.01(A)(i) to account for any adjustments to the Conversion Rate which shall have become effective, or any event requiring an adjustment to the Conversion Rate where the Ex Date of such event occurs, during the period of thirty (30) consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter.

(ii) *Conversion Upon Satisfaction of Trading Price Condition.* The Securities may be surrendered for conversion into cash or, at the Company's option, cash and shares of Common Stock

during the five (5) consecutive Business Days immediately after any five (5) consecutive Trading Day period (such five (5) consecutive Trading Day period, the “**Note Measurement Period**”) in which the average Trading Price per \$1,000 principal amount of the Securities was equal to or less than ninety eight percent (98%) of the average Conversion Value (as defined below) during the Note Measurement Period (such condition, the “**Trading Price Condition**”). The Bid Solicitation Agent shall not have any obligation to determine the Trading Price unless the Company has requested such determination in writing, and the Company shall have no obligation to make such request unless a Holder provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of the Securities would be equal to or less than ninety eight percent (98%) of the Conversion Value. Upon receipt of such evidence, the Company shall instruct the Bid Solicitation Agent in writing to determine the Trading Price per \$1,000 principal amount of the Securities for each of the five (5) successive Trading Days immediately after the Company receives such evidence and on each Trading Day thereafter until the first Trading Day on which the Trading Price Condition is no longer satisfied. For purposes of this paragraph, the “**Conversion Value**” per \$1,000 principal amount of Securities, on a given Trading Day, means the product of the Closing Sale Price on such Trading Day and the Conversion Rate in effect on such Trading Day.

(iii) *Conversion Based on Redemption.* A Security, or portion of a Security, which has been called for Redemption pursuant to Section 3.01 and paragraph 6 of the Securities may be surrendered for conversion into cash or, at the Company’s option, cash and shares of Common Stock; *provided, however,* that such Security or portion thereof may be surrendered for conversion pursuant to this paragraph only until the close of business on the Business Day immediately preceding the Redemption Date.

(iv) *Conversion Upon Certain Distributions.* If the Company takes any action, or becomes aware of any event, that would require an adjustment to the Conversion Rate pursuant to Sections 10.05(b), 10.05(c), 10.05(d) or 10.05(e), the Securities may be surrendered for conversion into cash or, at the Company’s option, cash and shares of Common Stock beginning on the date the Company mails the notice to the Holders as provided in Section 10.10 (or, if earlier, the date the Company is required under this Indenture to mail such notice) and at any time thereafter until the close of business on the Business Day immediately preceding the Ex Date (as defined in Section 10.05(g)) of the applicable transaction or until the Company announces that such transaction will not take place.

(v) *Conversion Upon Occurrence of Certain Corporate Transactions.* If either:

(a) a Fundamental Change or a Make-Whole Fundamental Change occurs; or

(b) the Company is a party to a consolidation, merger or binding share exchange, sale of all or substantially all of the Company’s properties and assets or other similar transaction, in each case, pursuant to which the Common Stock would be converted into or exchanged for, or would constitute solely the right to receive, cash, securities or other property,

then, in each case, the Securities may be surrendered for conversion into cash or, at the Company’s option, cash and shares of Common Stock at any time during the period that begins on, and includes, the date that is thirty (30) calendar days prior to the date originally announced by the Company as the anticipated effective date of such transaction (which anticipated effective date the Company shall disclose, in good faith, in the written notice, public announcement and publication referred to in Section 10.01(C)) and ends on, and includes, the date that is thirty (30) calendar days after the actual effective date of such transaction; *provided, however,* that if such transaction is a Make-Whole Fundamental Change, then the Securities may also be surrendered for conversion into cash or, at the Company’s option, cash and shares of Common Stock at any time during the Make-Whole Conversion Period applicable to such Make-Whole Fundamental Change; *provided, further,* that if such transaction is a Fundamental Change, then the Securities may also be surrendered for conversion into cash and, if applicable, shares of Common Stock at any time until, and including, the Fundamental Change Repurchase Date applicable to such Fundamental Change.

(vi) *Conversion on or after August 1, 2024 and at any time from July 1, 2011 to August 1, 2011.* The Securities may be surrendered for conversion into cash or, at the Company’s option, cash and shares of Common Stock at any time on or after August 1, 2024 and at any time from, and including, July 1, 2011 to, and including, August 1, 2011.

(B) The initial Conversion Rate shall be 15.3478 shares of Common Stock per \$1,000 principal amount of Securities. The Conversion Rate shall be subject to adjustment in accordance with Sections 10.05 through 10.14.

(C) Whenever any event described in Section 10.01 shall occur which shall cause the Securities to become convertible as provided in this Article X, the Company shall promptly deliver, in accordance with Section 14.02, written notice of the convertibility of the Securities to the Trustee, the Conversion Agent and each Holder and shall, as soon practicable, but in no event later than the open of business on the second Business Day following the date the Securities shall become convertible as provided in this Article X as a result of such event, publicly announce, through a reputable national newswire service, and publish on the Company's website, that the Securities have become convertible. Such written notice, public announcement and publication shall include:

- (i) a description of such event;
- (ii) a description of the periods during which the Securities shall be convertible as provided in this Article X as a result of such event;
- (iii) the anticipated effective date of such event, if applicable; and
- (iv) the procedures Holders must follow to convert their notes in accordance with this Article X, including the name and address of the Conversion Agent.

(D) A Holder may convert a portion of the principal amount of a Security if such portion is \$1,000 principal amount or an integral multiple of \$1,000 principal amount. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of such Security.

Section 10.02 CONVERSION PROCEDURE AND PAYMENT UPON CONVERSION.

(A) To convert a Security, a Holder must satisfy the requirements of paragraph 10 of the Securities or to convert interests in a Global Security, the Holder must comply with the applicable procedures of the Depository. Upon conversion of a Holder's Security, the Company shall deliver, through the Conversion Agent, to such converting Holder a settlement amount, per \$1,000 principal amount of Securities being converted, equal to the sum of the Daily Settlement Amounts for each of the 20 Trading Days during the Cash Settlement Averaging Period (the "**Settlement Amount**").

The "**Daily Settlement Amount**" for each of the 20 Trading Days during the Cash Settlement Averaging Period shall consist of (i) the Daily Principal Return and (ii) the Daily Net Shares; *provided, however*, that the Company shall not issue fractional shares of Common Stock and shall instead deliver cash (in addition to any other consideration payable upon such conversion) in an amount equal to the value of such fraction computed on the basis of the Closing Sale Price per share of Common Stock on the Conversion Date of such conversion.

The Company shall deliver such Settlement Amount as soon as practicable following the date (the "**Conversion Date**") on which such Holder satisfies all the requirements for such conversion specified in paragraph 10 of the Securities, but in no event more than three (3) Business Days after the last Trading Day in the Cash Settlement Averaging Period applicable to such conversion; *provided, however*, that any Make-Whole Consideration payable pursuant to Section 10.14 shall be delivered by the Company within the time period specified in Section 10.14.

(B) "**Cash Settlement Averaging Period**" shall mean, with respect to a Security that is tendered for conversion in accordance with this Article X, the twenty (20) consecutive Trading-Day period that begins on, and includes, the second (2nd) Trading Day after the day such Security is tendered for such conversion.

“**Daily Principal Return**” shall mean, with respect to a Trading Day, the lesser of fifty dollars (\$50) and the Daily Conversion Value for such Trading Day.

“**Daily Conversion Value**” shall mean, with respect to a Trading Day, one-twentieth (1/20th) of the product of (i) the Conversion Rate in effect on such Trading Day and (ii) the Closing Sale Price per share of Common Stock on such Trading Day.

“**Daily Net Shares**” shall mean, with respect to a Trading Day, an amount equal to the following: (i) if the Daily Conversion Value for such Trading Day is equal to or lesser than fifty dollars (\$50), then the Daily Net Shares with respect to such Trading Day shall mean an amount equal to zero (0); and (ii) if the Daily Conversion Value for such Trading Day exceeds fifty dollars (\$50), then the Daily Net Shares with respect to such Trading Day shall mean a fraction (a) whose numerator is the excess of such Daily Conversion Value over fifty dollars (\$50) and (b) whose denominator is the Closing Sale Price per share of Common Stock on such Trading Day.

(C) On and after the Conversion Date of a Security, the person in whose name any certificate representing Net Shares, if any, is to be registered shall be treated as a stockholder of record of the Company, and all rights of the Holder of such Security shall terminate, other than the right to receive the consideration deliverable upon conversion of such Security as provided herein. A Holder of Securities is not entitled, as such, to any rights of a holder of Common Stock until such Holder has converted its Securities into shares of Common Stock (to the extent such Securities are convertible into Shares of Common Stock) or is deemed to be a stockholder of record of the Company, as provided in this Section 10.02(C).

(D) Except as provided in the Securities or in this Article X, no payment or adjustment will be made for accrued interest or Contingent Interest on a converted Security or for dividends on any Common Stock issued on or prior to conversion. If any Holder surrenders a Security for conversion after the close of business on the record date for the payment of an installment of interest and prior to the opening of business on the related interest payment date, then, notwithstanding such conversion, the interest payable with respect to such Security on such interest payment date shall be paid on such interest payment date to the Holder of record of such Security at the close of business on such record date; *provided, however*, that such Security, when surrendered for conversion, must be accompanied by payment in cash to the Conversion Agent on behalf of the Company of an amount equal to the interest payable on such interest payment date on the portion so converted; *provided further*, however, that such payment to the Conversion Agent described in the immediately preceding proviso in respect of a Security surrendered for conversion shall not be required if such Security is called for Redemption pursuant to Section 3.04 and paragraphs 6 and 7 of the Securities or if the Holder converts pursuant to a Fundamental Change and the Company has specified a Redemption Date or a Fundamental Change Repurchase Date, as applicable, in either case that is after a record date and on or prior to the related interest payment date; *provided further*, that, if the Company shall have, prior to the Conversion Date with respect to a Security, defaulted in a payment of interest on such Security, then in no event shall the Holder of such Security who surrenders such Security for conversion be required to pay such defaulted interest or the interest that shall have accrued on such defaulted interest pursuant to Section 2.12 or otherwise (it being understood that nothing in this Section 10.02(D) shall affect the Company’s obligations under Section 2.12).

(E) If a Holder converts more than one Security at the same time, the number of full shares of Common Stock issuable upon such conversion, if any, shall be based on the total principal amount of all Securities converted.

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

(G) If the last day on which a Security may be converted is a Legal Holiday in a place where a Conversion Agent is located, the Security may be surrendered to that Conversion Agent on the next succeeding day that is not a Legal Holiday.

(H) The Company may elect to pay cash to the Holders surrendered for conversion in lieu of all or a portion of the Common Stock otherwise issuable pursuant to this Article X. In such event, on any day prior to the first Trading Day of the applicable Cash Settlement Averaging Period, the Company shall specify a percentage of

the Daily Share Amount that shall be settled in cash (the “**Cash Percentage**”) and the amount of cash that the Company shall pay in respect of each Trading Day in the applicable Observation Period will equal the product of: (1) the Cash Percentage, (2) the Daily Share Amount for such Trading Day and (3) the Closing Sale Price of the Common Stock for such Trading Day (provided that after the consummation of a Fundamental Change in which the consideration is comprised entirely of cash, the amount used in this clause (3) shall be the cash price per share received by holders of the Common Stock in such Fundamental Change). The number of shares of Common Stock that the Company shall deliver in respect of each Trading Day in the applicable Cash Settlement Averaging Period will be a percentage of the Daily Share Amount equal to 100% minus the Cash Percentage. Upon making a determination that a percentage of the Daily Share Amount will be settled in cash, the Company shall promptly notify Holders of such Cash Percentage by notifying the Trustee (the “**Cash Percentage Notice**”). If the Company does not specify a Cash Percentage by the close of business on the Trading Day prior to the scheduled first Trading Day of the applicable Cash Settlement Averaging Period, the Company shall settle 100% of the Daily Share Amount for each Trading Day in the applicable Cash Settlement Averaging Period with shares of Common Stock; *provided, however*, that the Company shall pay cash in lieu of fractional shares otherwise issuable upon conversion of Securities. The Company at its option, may revoke any Cash Percentage Notice by notifying the Trustee; provided, that the Company shall revoke such notice by the close of business on the Trading Day prior to the scheduled first Trading Day of the applicable Cash Settlement Averaging Period.

Section 10.03 TAXES ON CONVERSION.

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

The Company agrees, and each Holder is deemed to agree, that delivery to such Holder of the full number of shares of Common Stock into which each Security is convertible, together with any cash payment of such Holder’s fractional shares or otherwise in accordance with Section 10.02, will be treated as a contingent payment (in an amount equal to the sum of the then Fair Market Value of such Common Stock and such cash payment, if any) on the Securities for purposes of the CPDI Regulations governing contingent payment debt obligations.

Section 10.04 COMPANY TO PROVIDE STOCK.

The Company shall at all times reserve out of its authorized but unissued Common Stock or Common Stock held in its treasury enough shares of Common Stock to permit the conversion, in accordance herewith, of all of the Securities. The shares of Common Stock, if any, due upon conversion of a Global Security shall be delivered by the Company in accordance with the Depository’s customary practices.

All shares of Common Stock which may be issued upon conversion of the Securities shall be validly issued, fully paid and non-assessable and shall be free of preemptive or similar rights and free of any lien or adverse claim.

The Company shall comply with all securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities and shall list such shares on each national securities exchange or automated quotation system on which the Common Stock is listed.

Section 10.05 ADJUSTMENT OF CONVERSION RATE.

The Conversion Rate shall be subject to adjustment from time to time as follows:

- (a) in case the Company shall (1) pay a dividend in shares of Common Stock to all holders of Common Stock, (2) make a distribution in shares of Common Stock to all holders of Common Stock, (3) subdivide the outstanding shares of Common Stock into a

greater number of shares of Common Stock or (4) combine the outstanding shares of Common Stock into a smaller number of shares of Common Stock, the Conversion Rate shall be adjusted by multiplying the Conversion Rate in effect immediately prior to close of business on the record date or effective date, as applicable, of such dividend, distribution, subdivision or combination by the number of shares of Common Stock which a person who owns only one share of Common Stock immediately before the record date or effective date, as applicable, of such dividend, distribution, subdivision or combination and who is entitled to participate in such dividend, distribution, subdivision or combination would own immediately after giving effect to such dividend, distribution, subdivision or combination (without giving effect to any arrangement pursuant to such dividend, distribution, subdivision or combination not to issue fractional shares of Common Stock). Any adjustment made pursuant to this Section 10.05(a) shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision or combination.

(b) in case the Company shall issue rights or warrants to all or substantially all holders of Common Stock, entitling them, for a period expiring not more than sixty (60) days immediately following the record date for the determination of holders of Common Stock entitled to receive such rights or warrants, to subscribe for or purchase shares of Common Stock (or securities convertible into or exchangeable or exercisable for Common Stock), at a price per share (or having a conversion, exchange or exercise price per share) that is less than the Current Market Price (as determined pursuant to Section 10.05(g)) per share of Common Stock on the record date for the determination of holders of Common Stock entitled to receive such rights or warrants, the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to such record date by a fraction of which (A) the numerator shall be the sum of (I) the number of shares of Common Stock outstanding at the close of business on such record date and (II) the aggregate number of shares (the “**Underlying Shares**”) of Common Stock underlying all such issued rights or warrants (whether by exercise, conversion, exchange or otherwise), and (B) the denominator shall be the sum of (I) number of shares of Common Stock outstanding at the close of business on such record date and (II) the number of shares of Common Stock which the aggregate exercise, conversion, exchange or other price at which the Underlying Shares may be subscribed for or purchased pursuant to such rights or warrants would purchase at such current market price per share of Common Stock; *provided, however*, no adjustment shall be made pursuant to this Section 10.05(b) solely by reason of a distribution of rights pursuant to a shareholders’ rights plan, provided the Company has complied with the provisions of Section 10.13 with respect to such shareholders’ rights plan and distribution. Such increase shall become effective immediately prior to the opening of business on the day following such record date. In no event shall the Conversion Rate be decreased pursuant to this Section 10.05(b).

(c) in case the Company shall dividend or distribute to all or substantially all holders of Common Stock shares of Capital Stock of the Company or any existing or future Subsidiary (other than Common Stock), evidences of Indebtedness or other assets (other than dividends or distributions requiring an adjustment to the Conversion Rate in accordance with Sections 10.05(d) or 10.05(e)), or shall dividend or distribute to all or substantially all holders of Common Stock rights or warrants to subscribe for or purchase securities (other than dividends or distributions of rights or warrants requiring an adjustment to the Conversion Rate in accordance with Section 10.05(b)), then in each such case the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date for the determination of stockholders entitled to such dividend or distribution by a fraction of which (A) the numerator shall be the Current Market Price per share of Common Stock (as determined pursuant to Section 10.05(g)) on such record date and (B) the denominator shall be an amount equal to (I) such Current Market Price per share of Common Stock less (II) 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), on such record date, of the portion of the shares of Capital Stock, evidences of Indebtedness, assets, rights and warrants to be dividended or distributed applicable to one share of Common Stock, such increase to become effective immediately prior to the opening of business on the day following such record date; *provided, however*, that if such denominator is equal to or less than zero, then, in lieu of the foregoing adjustment to the Conversion Rate, adequate provision shall be made so that each Holder shall have the right to receive upon conversion of its Securities, in addition to any consideration otherwise payable as herein provided upon such conversion, an amount, per \$1,000 principal amount of such Securities, of shares of Capital Stock, evidences of Indebtedness, assets, rights and/or warrants that a person that owns, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect at the close of business on such record date would have received as a result of such dividend or distribution. Notwithstanding the foregoing, in the event that the Company shall distribute rights or warrants (other than distributions of rights or warrants requiring an adjustment to the Conversion Rate in accordance with Section 10.05(b)) (collectively, “Rights”) *pro rata* to holders of Common Stock, the Company may, in lieu of making any adjustment pursuant to this Section 10.05(c), make proper provision so that each Holder of a Security who converts such Security (or any portion thereof) on or after the record date for such distribution and prior to the expiration or redemption of the Rights shall be entitled to receive upon such conversion, in addition to any consideration otherwise payable as herein provided upon such conversion, a number of Rights, per \$1,000 principal amount of such Security, to be determined as follows: (i) if such conversion occurs on or prior to the date for the distribution to the holders of Rights of separate certificates evidencing such Rights (the “Distribution Date”), the same number of Rights to which a holder of a number of shares of Common Stock equal to the Conversion Rate in effect at the close of business on such record date (or, in the event such distribution is pursuant to a shareholders’ rights plan, equal to the number of Net Shares that would be issuable in accordance herewith if such Security were surrendered for conversion immediately before the close of business on such record date) would be entitled at the time of such conversion in accordance with the terms and provisions of and applicable to the Rights; and (ii) if such conversion occurs after the Distribution Date, the same number of Rights to which a holder of a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the Distribution Date (or, in the event such distribution is pursuant to a shareholders’ rights plan, equal to the number of Net Shares that would be issuable in accordance herewith if such Security were surrendered for conversion immediately before the close of business on the Business Day immediately preceding the Distribution Date) would have been entitled on the Distribution Date in accordance with the terms and provisions of and applicable to the Rights. Any distribution of rights or warrants pursuant to a shareholders’ rights plan complying with the requirements set forth in the preceding sentence of this paragraph and with Section 10.13 shall not constitute a distribution of rights or warrants pursuant to this Section 10.05(c). In no event shall the Conversion Rate be decreased pursuant to this Section 10.05(c).

(d) In case the Company shall, by dividend or otherwise, at any time make a distribution of cash (excluding any cash that is distributed as part of a distribution requiring a Conversion Rate adjustment pursuant to Section 10.05(e)) to all or substantially all holders of Common Stock, the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date for the determination of holders of Common Stock entitled to such distribution by a fraction (A) whose numerator shall be the Current Market Price per share of Common Stock (as determined pursuant to Section 10.05(g)) on such record date and (B) whose denominator shall be an amount equal to (I) such Current Market Price per share of Common Stock less (II) the amount of the distribution per share of Common Stock; *provided, however*, that the Conversion Rate shall not be adjusted pursuant to this Section 10.05(d) to the extent, and only to the extent, such adjustment would cause the Conversion Price to be less than one cent (\$0.01) (which minimum amount shall be subject to appropriate adjustments, in the good faith determination of the Board of Directors (whose determination shall be described in a Board Resolution), to

account for stock splits and combinations, stock dividends, reclassifications and similar events); *provided further* that, if the denominator of such fraction shall be equal to or less than zero, the Conversion Rate shall be instead adjusted so that the Conversion Price is equal to one cent (\$0.01) (as adjusted in accordance with the immediately preceding proviso). An adjustment to the Conversion Rate pursuant to this Section 10.05(d) shall become effective immediately prior to the opening of business on the day immediately following such record date. In no event shall the Conversion Rate be decreased pursuant to this Section 10.05(d).

(e) In case the Company or any Subsidiary shall distribute cash or other consideration in respect of a tender offer or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock where the sum of the aggregate amount of such cash distributed and the aggregate fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution), as of the Expiration Date (as defined below), of such other consideration distributed (such sum, the “**Aggregate Amount**”) expressed as an amount per share of Common Stock validly tendered or exchanged, and not withdrawn, pursuant to such tender offer or exchange offer as of the Expiration Time (as defined below) (such tendered or exchanged shares of Common Stock, the “**Purchased Shares**”) exceeds the current market price per share of Common Stock (as determined pursuant to Section 10.05(g)) on the last date (such last date, the “**Expiration Date**”) on which tenders or exchanges could have been made pursuant to such tender offer or exchange offer (as the same may be amended through the Expiration Date), then the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to the close of business on the Expiration Date by a fraction (A) whose numerator is equal to the sum of (I) the Aggregate Amount and (II) the product of (a) the Current Market Price per share of Common Stock (as determined pursuant to Section 10.05(g)) on the Expiration Date and (b) an amount equal to (i) the number of shares of Common Stock outstanding as of the last time (the “**Expiration Time**”) at which tenders or exchanges could have been made pursuant to such tender offer or exchange offer (including all Purchased Shares) less (ii) the Purchased Shares and (B) whose denominator is equal to the product of (I) the number of shares of Common Stock outstanding as of the Expiration Time (including all Purchased Shares) and (II) the Current Market Price per share of Common Stock on the Expiration Date.

An increase, if any, to the Conversion Rate pursuant to this Section 10.05(e) shall become effective immediately prior to the opening of business on the Business Day following the Expiration Date. In the event that the Company or a Subsidiary is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such tender offer or exchange offer had not been made. If the application of this Section 10.05(e) to any tender offer or exchange offer would result in a decrease in the Conversion Rate, no adjustment shall be made for such tender offer or exchange offer under this Section 10.05(e).

(f) In addition to the foregoing adjustments in subsections (a), (b), (c), (d) and (e) above, the Company, from time to time and to the extent permitted by law and the continued listing requirements of the Nasdaq Global Select Market, may increase the Conversion Rate by any amount for a period of at least twenty (20) days or such longer period as may be permitted by law, if the Board of Directors has made a determination, which determination shall be conclusive, that such increase would be in the best interests of the Company. Such Conversion Rate increase shall be irrevocable during such period. The Company shall give notice to the Trustee and the Conversion Agent and shall mail notice of such increase to each Holder of Securities at such Holder’s address as the same appears on the registry books of the Registrar, at least fifteen (15) days prior to the date on which such increase commences.

(g) For the purpose of any computation under subsections (a), (b), (c) or (d) above of this Section 10.05, the current market price per share of Common Stock (the

“**Current Market Price**”) on the date fixed for determination of the stockholders entitled to receive the issuance or distribution requiring such computation (the “**Determination Date**”) shall be deemed to be the average of the Closing Sale Prices for the ten (10) consecutive Trading Days ending on, and including, the earlier of the Determination Date and the Ex Date with respect to such issuance or distribution, and, for the purpose of any computation under Section 10.05(e), the current market price per share of Common Stock on the Expiration Date for the tender offer or exchange offer requiring such computation shall be deemed to be the average of the Closing Sale Price for the ten (10) consecutive Trading Days immediately preceding, and including, the Expiration Date; *provided, however*, that such Current Market Price per share of Common Stock shall be appropriately adjusted by the Board of Directors, in its good faith determination (which determination shall be described in a Board Resolution), to account for any adjustment, pursuant hereto, to the Conversion Rate that shall become effective, or any event requiring, pursuant hereto, an adjustment to the Conversion Rate where the Ex Date of such event occurs, at any time during the period that begins on, and includes, the first day of such ten (10) consecutive Trading Days and ends on, and includes, the date when the adjustment to the Conversion Rate on account of the event requiring the computation of such Current Market Price becomes effective.

The term “**Ex Date**,” (i) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades the regular way on the relevant exchange or in the relevant market from which the Closing Sale Price was obtained without the right to receive such issuance or distribution, (ii) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades the regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and (iii) when used with respect to any tender offer or exchange offer means the first date on which the Common Stock trades the regular way on such exchange or in such market after the expiration time of such tender offer or exchange offer (as it may be amended or extended).

Section 10.06 NO ADJUSTMENT.

Notwithstanding anything to the contrary in Section 10.05, no adjustment in the Conversion Rate pursuant to Section 10.05 shall be required until cumulative adjustments amount to one percent (1%) or more of the Conversion Rate as last adjusted (or, if never adjusted, the initial Conversion Rate); *provided, however*, that any adjustments to the Conversion Rate which by reason of this Section 10.06 are not required to be made shall be carried forward and taken into account in any subsequent adjustment to the Conversion Rate; *provided further*, that if the Company shall mail a notice of Redemption pursuant to Section 3.04, or if a Fundamental Change or Make-Whole Fundamental Change occurs, or if the Securities shall become convertible pursuant to Section 10.01(A)(iv) or Section 10.01(A)(v), then, in each case, any adjustments to the Conversion Rate that have been, and at such time remain, deferred pursuant to this Section 10.06 shall be given effect, and such adjustments, if any, shall no longer be carried forward and taken into account in any subsequent adjustment to the Conversion Rate; *provided, further*, that the Company shall make such carried forward adjustments regardless of whether the aggregate adjustment is less than 1% within one year of the first such adjustment carried forward, and upon maturity. All calculations under this Article X shall be made to the nearest cent or to the nearest one-millionth of a share, as the case may be.

If any rights, options or warrants issued by the Company and requiring an adjustment to the Conversion Rate in accordance with Section 10.05 are only exercisable upon the occurrence of certain triggering events, then the Conversion Rate will not be adjusted as provided in Section 10.05 until the earliest of such triggering event occurs. Upon the expiration or termination of any such rights, options or warrants without the exercise of such rights, options or warrants, the Conversion Rate then in effect shall be adjusted immediately to the Conversion Rate which would have been in effect at the time of such expiration or termination had such rights, options or warrants, to the extent outstanding immediately prior to such expiration or termination, never been issued.

If any dividend or distribution is declared and the Conversion Rate is adjusted pursuant to Section 10.05 on account of such dividend or distribution, but such dividend or distribution is thereafter not paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate which would then be in effect had such dividend or distribution not been declared.

No adjustment to the Conversion Rate need be made pursuant to Section 10.05 for a transaction if Holders are to participate in the transaction without conversion on a basis and with notice that the Board of Directors determines in good faith to be fair and appropriate in light of the basis and notice on which holders of Common Stock participate in the transaction (which determination shall be described in a Board Resolution).

Notwithstanding anything herein to the contrary, in no event shall the Conversion Rate be increased pursuant to Section 10.05(b), Section 10.05(c), Section 10.05(d) or Section 10.05(e) to the extent, but only to the extent, such increase shall cause the Conversion Rate applicable to such Security to exceed 21.4869 shares per \$1,000 principal amount (the “**BCF Adjustment Cap**”); *provided, however*, that the BCF Adjustment Cap shall be adjusted in the same manner in which the Conversion Rate is to be adjusted pursuant to this Article X for stock splits and combinations, stock dividends, reclassifications and similar events.

Section 10.07 OTHER ADJUSTMENTS.

In the event that, as a result of an adjustment made pursuant to Section 10.05 hereof, the Holder of any Security thereafter surrendered for conversion shall become entitled to receive any shares of Capital Stock other than shares of Common Stock, thereafter the Conversion Rate of such other shares so receivable upon conversion of any Security shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this Article X.

Section 10.08 ADJUSTMENTS FOR TAX PURPOSES.

Except as prohibited by law the Company may (but is not obligated to) make such increases in the Conversion Rate, in addition to those required by Section 10.05 hereof, as it determines to be advisable in order that any stock dividend, subdivision of shares, distribution of rights to purchase stock or securities or distribution of securities convertible into or exchangeable for stock made by the Company or to its stockholders will not be taxable to the recipients thereof or in order to diminish any such taxation.

Section 10.09 NOTICE OF ADJUSTMENT.

Whenever the Conversion Rate is adjusted, the Company shall promptly mail to Holders at the addresses appearing on the Registrar’s books a notice of the adjustment and file with the Trustee and the Conversion Agent an Officer’s Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence of the correctness of such adjustment.

Section 10.10 NOTICE OF CERTAIN TRANSACTIONS.

In the event that:

- (1) the Company takes any action, or becomes aware of any event, which would require an adjustment in the Conversion Rate,
- (2) the Company takes any action that would require a supplemental indenture pursuant to Section 10.11, or
- (3) there is a dissolution or liquidation of the Company,

the Company shall mail to Holders at the addresses appearing on the Registrar’s books, and the Trustee and the Conversion Agent, a written notice stating the proposed record, effective or expiration date, as the case may be, of any transaction referred to in clause (1), (2) or (3) of this Section 10.10. The Company shall mail such notice at least twenty (20) days before such date; however, failure to mail such notice or any defect therein shall not affect the validity of any transaction referred to in clause (1), (2) or (3) of this Section 10.10.

Section 10.11 EFFECT OF RECLASSIFICATIONS, CONSOLIDATIONS, MERGERS, BINDING SHARE EXCHANGES OR SALES ON CONVERSION PRIVILEGE.

Except as provided in Section 10.14(E), if any of the following shall occur, namely: (i) any reclassification or change in the Common Stock issuable upon conversion of Securities (other than a change only 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 of Common Stock), (ii) any consolidation, merger or binding share exchange to which the Company is a party other than a merger in which the Company is the continuing Person 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, the Common Stock or (iii) any sale, transfer, lease, conveyance or other disposition of all or substantially all of the property or assets of the Company or consummation of a similar transaction, in each case pursuant to which the Common Stock would be converted into or exchanged for, or would constitute solely the right to receive, cash, securities or other property, then the Company or such successor or purchasing Person, as the case may be, shall execute and deliver to the Trustee a supplemental indenture in form reasonably satisfactory to the Trustee providing that, at and after the effective time of such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, the Holder of each Security then outstanding shall have the right to convert such Security (if otherwise convertible pursuant to this Article X) into the kind and amount of cash, securities or other property (collectively, "**Reference Property**") receivable upon such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease, conveyance, disposition or similar transaction by a holder of a number of shares of Common Stock equal to a fraction whose denominator is one thousand (1,000) and whose numerator is the product of the principal amount of such Security and the Conversion Rate in effect immediately prior to such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease, conveyance, disposition or similar transaction (assuming, if holders of Common Stock shall have the opportunity to elect the form of consideration to receive pursuant to such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, that the Collective Election shall have been made with respect to such election); *provided, however*, that at and after the effective time of such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, the Principal Return payable hereunder upon conversion of such Security shall continue to be payable in cash, the Daily Conversion Value and Daily Net Shares shall be calculated based on the fair value of the Reference Property instead of the Closing Sale Price per share of Common Stock and the Daily Share Amount shall be payable, at the Company's option in cash, Reference Property or a combination thereof pursuant to the procedures set forth in Section 10.02(H). If holders of Common Stock shall have the opportunity to elect (the "**Collective Election**") the form of consideration to receive pursuant to such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, then the Company shall make adequate provision to give Holders, treated as a single class, a reasonable opportunity to elect the form of such consideration for purposes of determining the composition of the Reference Property referred to in the immediately preceding sentence, and once such election is made, such election shall apply to all Holders after the effective time of such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease, conveyance or disposition. Such Collective Election shall be determined based on the weighted average of the elections made by Holders of the Securities who participate in such determination, shall be subject to any limitations to which all of the holders of Common Stock are subject, such as pro-rata reductions applicable to any portion of the consideration payable in such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, and shall be conducted in such a manner as to be completed by the close of business on the actual effective date of such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease, conveyance or disposition. The supplemental indenture referred to in the first sentence of this paragraph shall provide for adjustments of the Conversion Rate which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Rate provided for in this Article X. The foregoing, however, shall not in any way affect the right a Holder of a Security may otherwise have, pursuant to Section 10.05(c), Section 10.05(b) or Section 10.13, to receive rights or warrants upon conversion of a Security. If, in the case of any such consolidation, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, 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 Person other than the successor or purchasing Person, as the case may be, in such consolidation, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors in good faith shall reasonably determine necessary by reason of the foregoing (which determination shall be described in a Board

Resolution). The provisions of this Section 10.11 shall similarly apply to successive consolidations, mergers, binding share exchanges, sales, transfers, leases, conveyances or dispositions.

In the event the Company shall execute a supplemental indenture pursuant to this Section 10.11, the Company shall promptly file with the Trustee and the Conversion Agent an Officer's 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, binding share exchange, sale, transfer, lease, conveyance or disposition and any adjustment to be made with respect thereto.

Section 10.12 DISCLAIMER OF THE TRUSTEE AND THE CONVERSION AGENT.

Neither of the Trustee nor the Conversion Agent shall have any duty to determine when an adjustment under this Article X should be made, how it should be made or what such adjustment should be, but each may accept as conclusive evidence of the correctness of any such adjustment, and shall be protected in relying upon, the Officer's Certificate with respect thereto which the Company is obligated to file with the Trustee and the Conversion Agent pursuant to Section 10.09 hereof. Neither of the Trustee nor the Conversion Agent makes any representation as to the validity or value of any securities or assets issued upon conversion of Securities, and none of them shall be responsible for the failure by the Company to comply with any provisions of this Article X.

Neither of the Trustee nor the Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 10.11, but each of them may accept as conclusive evidence of the correctness thereof, and shall be protected in relying upon, an Opinion of Counsel and the Officer's Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 10.11 hereof.

Section 10.13 RIGHTS DISTRIBUTIONS PURSUANT TO STOCKHOLDERS' RIGHTS PLANS.

Upon conversion of any Security or a portion thereof, the Company shall make provision for the Holder thereof to receive, in addition to, and concurrently with the delivery of, the consideration otherwise payable hereunder upon such conversion, the rights described in the Rights Agreement (whether or not the rights have been separated from the Common Stock prior to the time of conversion), but only to the extent such Holder is to receive shares of Common Stock upon such conversion. In the event that the Company implements a shareholders' rights plan after the date hereof or amends, supplements or supersedes the Rights Agreement, the Company shall provide that the Holders will receive, upon conversion of their Securities, in addition to the consideration otherwise payable hereunder upon such conversion, the rights described therein (whether or not the rights have been separated from the Common Stock prior to the time of conversion), but only to the extent such Holder will receive shares of Common Stock upon such conversion.

Section 10.14 INCREASED CONVERSION RATE APPLICABLE TO CERTAIN NOTES SURRENDERED IN CONNECTION WITH MAKE-WHOLE FUNDAMENTAL CHANGES.

(A) Notwithstanding anything herein to the contrary, the Conversion Rate applicable to each Security that is surrendered for conversion, in accordance with this Article X, at any time during the period (the "**Make-Whole Conversion Period**") that begins on, and includes, the date that is thirty (30) calendar days prior to the date originally announced by the Company as the anticipated effective date of a Make-Whole Fundamental Change (which anticipated effective date the Company shall disclose, in good faith, in the written notice, public announcement and publication referred to in Section 10.14(D)) and ends on, and includes, the date that is thirty (30) Business Days after the actual effective date of such Make-Whole Fundamental Change (or, if such Make-Whole Fundamental Change also constitutes a Fundamental Change, the Fundamental Change Repurchase Date applicable to such Fundamental Change) shall be increased to an amount equal to the Conversion Rate that would, but for this Section 10.14, otherwise apply to such Security pursuant to this Article X, plus an amount equal to the Make-Whole Applicable Increase; *provided, however*, that such increase to the Conversion Rate shall not apply if either:

(i) such Make-Whole Fundamental Change constitutes a Public Acquirer Fundamental Change with respect to which the Company shall have duly made, and given full effect to, an election, pursuant to and in accordance with Section 10.14(E), to make an Acquirer Stock Conversion Right Adjustment;
or

(ii) such Make-Whole Fundamental Change is announced by the Company but shall not be consummated.

The additional consideration payable hereunder on account of any Make-Whole Applicable Increase with respect to a Security surrendered for conversion is herein referred to as the “**Make-Whole Consideration.**”

The Make-Whole Consideration due upon a conversion of a Security by a Holder shall be paid as soon as practicable after the Conversion Date of such conversion, but in no event later than the later of (1) the date such Holder surrenders such Security for such conversion and (2) the third (3rd) Business Day after the Effective Date of the applicable Make-Whole Fundamental Change.

(B) As used herein, “**Make-Whole Applicable Increase**” shall mean, with respect to a Make-Whole Fundamental Change, the amount, set forth in the following table, which corresponds to the effective date of such Make-Whole Fundamental Change (the “**Effective Date**”) and the Applicable Price of such Make-Whole Fundamental Change:

Applicable Price	Effective Date					
	August 1, 2006	August 1, 2007	August 1, 2008	August 1, 2009	August 1, 2010	August 1, 2011
\$46.54	6.50	6.72	6.60	6.42	6.20	0.00
\$50.00	5.70	5.86	5.68	5.42	5.06	0.00
\$55.00	4.77	4.85	4.62	4.29	3.78	0.00
\$60.00	4.03	4.07	3.81	3.43	2.83	0.00
\$65.00	3.44	3.45	3.17	2.77	2.13	0.00
\$70.00	2.97	2.95	2.67	2.26	1.61	0.00
\$75.00	2.58	2.55	2.26	1.86	1.23	0.00
\$80.00	2.26	2.22	1.93	1.54	0.96	0.00
\$85.00	1.99	1.94	1.67	1.29	0.75	0.00
\$90.00	1.76	1.71	1.45	1.09	0.60	0.00
\$95.00	1.57	1.51	1.27	0.93	0.48	0.00
\$100.00	1.40	1.35	1.11	0.80	0.40	0.00
\$110.00	1.13	1.09	0.88	0.61	0.29	0.00
\$120.00	0.93	0.89	0.70	0.48	0.22	0.00
\$130.00	0.77	0.74	0.58	0.38	0.18	0.00
\$140.00	0.65	0.62	0.48	0.32	0.15	0.00
\$150.00	0.55	0.53	0.40	0.27	0.13	0.00
\$160.00	0.46	0.45	0.34	0.23	0.12	0.00
\$170.00	0.40	0.39	0.30	0.20	0.11	0.00
\$180.00	0.34	0.34	0.26	0.17	0.10	0.00
\$190.00	0.30	0.30	0.22	0.15	0.09	0.00
\$200.00	0.26	0.26	0.20	0.14	0.08	0.00

provided, however, that:

(i) if the actual Applicable Price of such Make-Whole Fundamental Change is between two (2) prices listed in the table above under the column titled “Applicable Price,” or if the actual Effective Date of such Make-Whole Fundamental Change is between two dates listed in the table above in the row immediately below the title “Effective Date,” then the Make-Whole Applicable Increase for such

Make-Whole Fundamental Change shall be determined by linear interpolation between the Make-Whole Applicable Increases set forth for such two prices, or for such two dates based on a three hundred and sixty five (365) day year, as applicable;

(ii) if the actual Applicable Price of such Make-Whole Fundamental Change is greater than \$200.00 per share (subject to adjustment as provided in Section 10.14(B)(iii)), or if the actual Applicable Price of such Make-Whole Fundamental Change is less than \$46.54 per share (subject to adjustment as provided in Section 10.14(B)(iii)), then the Make-Whole Applicable Increase shall be equal to zero (0);

(iii) if an event occurs that requires, pursuant to this Article X (other than solely pursuant to this Section 10.14), an adjustment to the Conversion Rate, then, on the date and at the time such adjustment is so required to be made, each price set forth in the table above under the column titled "Applicable Price" shall be deemed to be adjusted so that such price, at and after such time, shall be equal to the product of (1) such price as in effect immediately before such adjustment to such price and (2) a fraction whose numerator is the Conversion Rate in effect immediately before such adjustment to the Conversion Rate and whose denominator is the Conversion Rate to be in effect, in accordance with this Article X, immediately after such adjustment to the Conversion Rate;

(iv) each Applicable Increase amount set forth in the table above shall be adjusted in the same manner in which, and for the same events for which, the Conversion Rate is to be adjusted pursuant to Section 10.01 through Section 10.13; and

(v) in no event shall the Conversion Rate applicable to any Security be increased pursuant to this Section 10.14 to the extent, but only to the extent, such increase shall cause the Conversion Rate applicable to such Security to exceed 21.4869 shares per \$1,000 principal amount (the "**BCF Make-Whole Cap**"); *provided, however*, that the BCF Make-Whole Cap shall be adjusted in the same manner in which, and for the same events for which, the Conversion Rate is to be adjusted pursuant to this Article X.

(C) As used herein, "**Applicable Price**" shall have the following meaning with respect to a Make-Whole Fundamental Change: (a) if such Make-Whole Fundamental Change constitutes a Common Stock Change Make-Whole Fundamental Change and the consideration (excluding cash payments for fractional shares or pursuant to statutory appraisal rights) for the Common Stock in such Make-Whole Fundamental Change consists solely of cash, then the "Applicable Price" with respect to such Make-Whole Fundamental Change shall be equal to the cash amount paid per share of Common Stock in such Make-Whole Fundamental Change; (b) if such Make-Whole Fundamental Change constitutes an Asset Sale Make-Whole Fundamental Change and the consideration paid for the property and assets of the Company consists solely of cash, then the "Applicable Price" with respect to such Make-Whole Fundamental Change shall be equal to the cash amount paid for the property and assets of the Company, expressed as an amount per share of Common Stock outstanding on the Effective Date of such Make-Whole Fundamental Change; and (c) in all other circumstances, the "Applicable Price" with respect to such Make-Whole Fundamental Change shall be equal to the average of the Closing Sale Prices per share of Common Stock for the five (5) consecutive Trading Days immediately preceding the Effective Date of such Make-Whole Fundamental Change, which average shall be appropriately adjusted by the Board of Directors, in its good faith determination (which determination shall be described in a Board Resolution), to account for any adjustment, pursuant hereto, to the Conversion Rate that shall become effective, or any event requiring, pursuant hereto, an adjustment to the Conversion Rate where the Ex Date of such event occurs, at any time during such five (5) consecutive Trading Days.

(D) At least thirty (30) calendar days before the first anticipated effective date of each proposed Make-Whole Fundamental Change, the Company shall mail to each Holder, in accordance with Section 14.02, written notice of, and shall publicly announce, through a reputable national newswire service, and publish on the Company's website, the anticipated effective date of such proposed Make-Whole Fundamental Change. Each such notice, announcement and publication shall also state (i) that the Company either (a) has elected, in accordance with Section 10.14(E), to make an Acquirer Stock Conversion Right Adjustment with respect to such Make-Whole Fundamental Change in lieu of increasing the Conversion Rate pursuant to Section 10.14(A) or (b) has elected not to make an Acquirer Stock Conversion Right Adjustment with respect to such Make-Whole Fundamental Change; and (ii) if the Company has elected not to make such Acquirer Stock Conversion Right Adjustment with respect to such Make-Whole Fundamental Change, that, in connection with such Make-Whole Fundamental Change, the Company

shall increase, in accordance herewith, the Conversion Rate applicable to Securities entitled as provided herein to such increase (along with a description of how such increase shall be calculated and the time periods during which Securities must be surrendered in order to be entitled to such increase). No later than the third Business Day after the Effective Date of each Make-Whole Fundamental Change, the Company shall mail, in accordance with Section 14.02, written notice of, and shall publicly announce, through a reputable national newswire service, and publish on the Company's website, such Effective Date and the Make-Whole Applicable Increase applicable to such Make-Whole Fundamental Change.

(E) Notwithstanding anything to the contrary in this Section 10.14, if the Company shall make any mailing, announcement or publication referred to in Section 10.14(D) in respect of a Make-Whole Fundamental Change that shall also constitute a Public Acquirer Fundamental Change, then the Company shall have the right to, in lieu of increasing the Conversion Rate pursuant to Section 10.14(A) in connection with such Make-Whole Fundamental Change, cause the right to convert the Securities in accordance with this Article X to change such that, from and after the effective time of such Public Acquirer Fundamental Change, the Holder of each Security then outstanding shall have the right to convert such Security (if otherwise convertible pursuant to this Article X) solely into shares of the Public Acquirer Common Stock applicable to such Public Acquirer Fundamental Change (except that, at and after such effective time, the Principal Return payable hereunder upon conversion of such Security shall continue to be payable in cash, the Daily Conversion Value and Daily Net Shares shall be calculated by reference to the Closing Sale Price per share of such Public Acquirer Common Stock as opposed to the Closing Sale Price per share of the Common Stock and the Daily Share Amount shall be payable, at the Company's option, in cash, Public Acquirer Common Stock (instead of Common Stock), or a combination thereof pursuant to the procedures set forth in Section 10.02(H)), at an initial Conversion Rate (which shall take effect at such effective time, but which shall thereafter be subject to adjustment in the same manner in which, and for the same events for which, the Conversion Rate is to be adjusted pursuant to this Article X) equal to the Conversion Rate in effect immediately before such effective time multiplied by a fraction whose numerator is the fair market value (as determined in good faith by the Board of Directors, which determination shall be described in a Board Resolution), as of such effective time, of the cash, securities and other property paid or payable pursuant to such Public Acquirer Fundamental Change per share of Common Stock and whose denominator is the average of the last reported sale prices per share of such Public Acquirer Common Stock for the five (5) consecutive trading days commencing on, and including, the trading day immediately after the effective date of such Public Acquirer Fundamental Change, which average shall be appropriately adjusted by the Board of Directors, in its good faith determination (which determination shall be described in a Board Resolution), to account for any event that, assuming such Public Acquirer Common Stock were Common Stock, would require, pursuant hereto, an adjustment to the Conversion Rate to become effective, or any such event whose Ex Date occurs, at any time during such five (5) consecutive trading days. Any such change in the right to convert the Securities in accordance with this Section 10.14(E) is herein referred to as an "**Acquirer Stock Conversion Right Adjustment**."

If the Company shall have elected, in accordance with this Section 10.14(E), to make an Acquirer Stock Conversion Right Adjustment with respect to a Public Acquirer Fundamental Change, then:

(i) the Company shall cause there to be executed and delivered to the Trustee a supplemental indenture in form reasonably satisfactory to the Trustee, which supplemental indenture shall (a) give due effect to such election in accordance with this Section 10.14(E), including, without limitation, evidencing a binding and enforceable obligation of the issuer of the applicable Public Acquirer Common Stock to satisfy the right of Holders to convert Securities in accordance with this Article X and this Section 10.14(E); (b) be executed by, without limitation, such issuer; (c) contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors in good faith shall reasonably determine (which determination shall be described in a Board Resolution); and (d) be in full force and effect no later than the effective time of such Public Acquirer Fundamental Change;

(ii) the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons for such supplemental indenture, the nature of the change in the conversion right pursuant to such Acquirer Stock Conversion Right Adjustment and the Conversion Rate as adjusted therefor;

(iii) the provisions of Section 10.11 shall not apply to such Public Acquirer Fundamental Change, *provided* such Public Acquirer Fundamental Change shall have been duly given effect in accordance with this Section 10.14(E); and

(iv) such election shall be irrevocable with respect to such Public Acquirer Fundamental Change and shall be deemed to have been made at the time the Company shall, with respect to such Public Acquirer Fundamental Change, mail the first notice, or make the first public announcement or publication, whichever shall occur earlier, referred to in Section 10.14(D) (it being understood that the Company shall discharge its obligations hereunder in good faith in determining whether an announced transaction and a completed transaction are deemed, for purposes of this clause (iv), to be the same Public Acquirer Fundamental Change despite differences in the announced terms and the terms as such transaction was consummated); *provided, however*, that the Company shall not be obligated to give effect to such an election with respect to a Public Acquirer Fundamental Change that has been announced by the Company but that shall not be consummated.

For avoidance of doubt, any change in the right of Holders, made pursuant to this Section 10.14(E), to convert Securities shall apply to all Holders.

(F) For avoidance of doubt, the provisions of this Section 10.14 shall not affect or diminish the Company's obligations, if any, pursuant to Article IV with respect to a Public Acquirer Fundamental Change or Make-Whole Fundamental Change.

(G) Nothing in this Section 10.14 shall prevent an adjustment to the Conversion Rate pursuant to Section 10.05 in respect of a Make-Whole Fundamental Change or a Public Acquirer Fundamental Change.

ARTICLE XI.

SUBORDINATION

Section 11.01 SECURITIES SUBORDINATED TO SENIOR INDEBTEDNESS

The Company covenants and agrees, and the Trustee and each holder of the Securities by the acceptance thereof likewise covenant and agree, that all Securities shall be issued subject to the provisions of this Article XI; and each person holding any Security, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees that all payments of the principal of, premium, if any, and interest on (and other obligations, if any, with respect to) the Securities by the Company shall, to the extent and in the manner set forth in this Article XI, be subordinated and junior in right of payment to the prior payment in full in cash of all obligations arising under Senior Indebtedness. The Securities shall be contractually equal in right of payment to the Company's other existing and future senior subordinated indebtedness, including the Company's 7.75% Convertible Senior Subordinated Notes due 2012.

Section 11.02 NO PAYMENT ON SECURITIES IN CERTAIN CIRCUMSTANCES.

(A) No direct or indirect payment (other than in Junior Securities) by or on behalf of the Company of principal of, premium, if any, or interest on (and other obligations, if any, with respect to) the Securities, whether pursuant to the terms of the Securities, upon acceleration, pursuant to a Purchase at Holder's Option, Redemption, Repurchase Upon a Fundamental Change or otherwise, will be made, if, at the time of such payment, there exists a default in the payment of all or any portion of the obligations on any Designated Senior Indebtedness, whether at maturity, on account of mandatory redemption or prepayment, acceleration or otherwise, and such default shall not have been cured or waived in writing or the benefits of this sentence waived in writing by or on behalf of the holders of such Designated Senior Indebtedness. In addition, during the continuance of any non-payment event of default with respect to any Designated Senior Indebtedness pursuant to which the maturity thereof may be immediately accelerated by the holder or holders of such Designated Senior Indebtedness or may be accelerated by the holder or holders of such Designated Senior Indebtedness with the giving of notice or the passage of time or both, and upon receipt by the Trustee of written notice (a "Payment Blockage Notice") from the holder or holders of such

Designated Senior Indebtedness or the trustee or agent acting on behalf of the holders of such Designated Senior Indebtedness, then, unless and until such event of default has been cured or waived in writing or has ceased to exist or such Designated Senior Indebtedness has been discharged or repaid in full in cash (or such payment shall be duly provided for in a manner satisfactory to holders of Senior Indebtedness) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash or the benefits of these provisions have been waived in writing by the holders of such Designated Senior Indebtedness, no direct or indirect payment (other than in Junior Securities) will be made by or on behalf of the Company of principal of, premium, if any, or interest on (and other obligations, if any, with respect to) the Securities, whether pursuant to the terms of the Securities, upon acceleration, pursuant to a Purchase at Holder's Option, Redemption, Repurchase Upon a Fundamental Change or otherwise to such holders during a period (a "**Payment Blockage Period**") commencing on the date of receipt of the Payment Blockage Notice by the Trustee and ending 179 days thereafter. The Trustee shall deliver a copy of the Payment Blockage Notice to the Company promptly upon receipt thereof.

Notwithstanding anything in the subordination provisions of this Indenture or the Securities to the contrary, (1) in no event will a Payment Blockage Period extend beyond 179 days from the date the Payment Blockage Notice in respect thereof was given and (2) not more than one Payment Blockage Period may exist with respect to the Securities during any period of 360 consecutive calendar days. No default that existed or was continuing on the date of delivery of any Payment Blockage Notice (whether or not such event is with respect to the same issue of Designated Senior Indebtedness) may be, or be made, the basis for a subsequent Payment Blockage Notice, unless such default has been cured or waived for a period of not less than 90 consecutive calendar days.

(B) In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee or any holder at a time when such payment is prohibited by Section 11.02(A), such payment shall be received and held in trust for the benefit of, and shall be paid over or delivered to, the holders of Designated Senior Indebtedness or their respective representatives, or to the trustee or trustees or agent or agents under any indenture or agreement pursuant to which any of such Designated Senior Indebtedness may have been issued or incurred, as their respective interests may appear, but only to the extent that, upon notice from the Trustee to the holders of Designated Senior Indebtedness that such prohibited payment has been made, the holders of the Designated Senior Indebtedness (or their representative or representatives or a trustee or trustees) notify the Trustee in writing of the amounts then due and owing on the Designated Senior Indebtedness, if any, and only the amounts specified in such notice to the Trustee shall be paid to the holders of Designated Senior Indebtedness.

Section 11.03 PAYMENT OVER OF PROCEEDS UPON DISSOLUTION, ETC.

(A) Upon any payment or distribution of assets or securities of the Company of any kind or character, whether in cash, property or securities, to the creditors of the Company upon any dissolution or winding-up or total liquidation or reorganization of the Company, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other similar proceedings relating to the Company, any assignment for the benefit of creditors or any marshalling of the Company's assets and liabilities, the holders of Senior Indebtedness shall be entitled to receive payment in full in cash of all obligations due in respect of such Senior Indebtedness (including interest accruing after, or which would accrue but for, the commencement of any proceeding at the rate specified in the applicable Senior Indebtedness, whether or not a claim for such interest would be allowed), or have provision made for such payment in a manner acceptable to holders of such Senior Indebtedness, before the holders of the Securities or the Trustee on behalf of such holders shall be entitled to receive any payment by the Company of the principal of, premium, if any, or interest on (and other obligations, if any, with respect to) the Securities, or any payment by the Company to acquire any of the Securities for cash, property or securities, or any distribution by the Company with respect to the Securities of any cash, property or securities (in each case, other than payments in Junior Securities).

(B) In the event that, notwithstanding the foregoing provision prohibiting such payment or distribution, any payment or distribution of assets or securities of the Company of any kind or character, whether in cash, property or securities (in each case, other than Junior Securities), shall be received by the Trustee or any Paying Agent or any holder of Securities at a time when such payment or distribution is prohibited by Section 11.02(A) and before all obligations in respect of Senior Indebtedness are paid in full in cash (or such payment shall be duly provided for in a manner satisfactory to the holders of Senior Indebtedness) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash, such payment or distribution shall be received and held in trust for the benefit of, and shall be paid over or delivered to,

the holders of Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders) or their respective representatives, or to the trustee or trustees or agent or agents under any indenture or agreement pursuant to which any of such Senior Indebtedness may have been issued or incurred, as their respective interests may appear, for application to the payment of Senior Indebtedness remaining unpaid until all such Senior Indebtedness has been paid in full in cash (or such payment shall be duly provided for in a manner satisfactory to the holders of Senior Indebtedness) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash after giving effect to any prior or concurrent payment, distribution or provision therefor to or for the holders of such Senior Indebtedness.

The consolidation of the Company with, or the merger of the Company with or into, another corporation or limited liability company or the liquidation or dissolution of the Company following the sale, conveyance, transfer or lease of the Company's and its subsidiaries' property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided in Article V shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Article XI if such other corporation shall, as a part of such consolidation, merger, sale, conveyance, transfer or lease, comply with the conditions stated in Article V.

Section 11.04 SUBROGATION.

Upon the payment in full in cash (or such payment shall be duly provided for in a manner satisfactory to the holders of Senior Indebtedness) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash of all Senior Indebtedness, the holders of the Securities shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, cash equivalents, property or securities of the Company made on such Senior Indebtedness until the principal of, premium, if any, and interest on the Securities shall be paid in full in cash or the Securities are no longer outstanding; and, for the purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, cash equivalents, property or securities to which the holders of the Securities or the Trustee on their behalf would be entitled except for the provisions of this Article XI, and no payment over pursuant to the provisions of this Article XI to the holders of Senior Indebtedness by holders of the Securities or the Trustee on their behalf shall, as between the Company, its creditors other than holders of Senior Indebtedness, and the holders of the Securities, be deemed to be a payment by the Company to or on account of the Senior Indebtedness. It is understood that the provisions of this Article XI 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 the Senior Indebtedness, on the other hand.

If any payment or distribution to which the holders of the Securities would otherwise have been entitled but for the provisions of this Article XI shall have been applied, pursuant to the provisions of this Article XI, to the payment of all amounts payable under Senior Indebtedness, then and in such case, the holders of the Securities shall be entitled to receive from the holders of such Senior Indebtedness any payments or distributions received by such holders of Senior Indebtedness in excess of the amount required to make payment in full in cash of such Senior Indebtedness (or to duly provide for such payment in a manner satisfactory to the holders of Senior Indebtedness) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash.

Section 11.05 OBLIGATIONS OF COMPANY UNCONDITIONAL.

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

Without limiting the generality of the foregoing, nothing contained in this Article XI shall restrict the right of the Trustee or the holders of Securities to take any action to declare the Securities to be due and payable prior to their stated maturity pursuant to Section 6.02 or to pursue any rights or remedies hereunder; provided, however, that all Senior Indebtedness then due and payable shall first be paid in full in cash (including Post-Petition Interest), or have provision made for such payment in a manner satisfactory to the holders of such Senior Indebtedness, before the holders of the Securities or the Trustee are entitled to receive any direct or indirect payment from the Company of principal of, premium and interest on (and other obligations, if any, with respect to) the Securities.

Section 11.06 NOTICE TO TRUSTEE.

The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Securities pursuant to the provisions of this Article XI. Unless the Trustee has failed to give notice of its change of address pursuant to Section 14.02 hereof, the Trustee shall not be charged with knowledge of the existence of any event of default with respect to any Senior Indebtedness or of any other facts which would prohibit the making of any payment to or by the Trustee unless and until the Trustee shall have received notice in writing at its Corporate Trust Office to that effect signed by an Officer of the Company, or by a holder of Senior Indebtedness or trustee or agent therefor; and prior to the receipt of any such written notice, the Trustee subject to the provisions of Article VII, shall be entitled to assume that no such facts exist; *provided, however*, that if the Trustee shall not have received the notice provided for in this Section 4.06 at least two Business Days prior to the date upon which by the terms of this Indenture any moneys shall become payable for any purpose (including, without limitation, the payment of the principal of, premium, if any, or interest on any Security), then, regardless of anything herein to the contrary, the Trustee shall have full power and authority to receive any moneys from the Company and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date. Nothing contained in this Section 11.06 shall limit the right of the holders of Senior Indebtedness to recover payments as contemplated by Section 11.03 or from any holder under Section 11.02(B). The Trustee shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself or itself to be a holder of any Senior Indebtedness (or a trustee on behalf of, or agent or other representative of, such holder) to establish that such notice has been given by a holder of such Senior Indebtedness or a trustee or agent or representative on behalf of any such holder. A holder of Senior Indebtedness and any trustee, agent or other representative on behalf of such holder shall be entitled to deliver all notices required by this Section 11.06 or otherwise pursuant to this Article XI to the address of the Trustee set forth herein unless such holder or the trustee, agent or representative of such holder shall have received actual written notice of a change of address of the Trustee.

In the event that the Trustee determines in good faith that any 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 XI, 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 XI, 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 11.07 TRUSTEE'S RELATION TO SENIOR INDEBTEDNESS.

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

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article XI, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness (except as provided in Sections 11.02(B) and 11.03(B)). The Trustee shall not be liable to any such holders if the Trustee shall in good faith mistakenly pay over or distribute to holders of Securities or to the Company or to any other person cash,

property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article XI or otherwise.

Section 11.08 SUBORDINATION RIGHTS NOT IMPAIRED BY ACTS OR OMISSIONS OF THE COMPANY OR HOLDERS OF SENIOR INDEBTEDNESS.

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

Section 11.09 HOLDERS AUTHORIZE TRUSTEE TO EFFECTUATE SUBORDINATION OF SECURITIES.

Each holder of Securities by his acceptance of such Securities authorizes and expressly directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article XI, and appoints the Trustee his attorney-in-fact for such purposes, including, in the event of any dissolution, winding-up, total liquidation or reorganization of the Company (whether in bankruptcy, insolvency, receivership, reorganization or similar proceedings or upon an assignment for the benefit of creditors or otherwise) tending towards liquidation of the business and assets of the Company, the filing of a claim for the unpaid balance of its or his Securities in the form required in those proceedings.

Section 11.10 THIS ARTICLE NOT TO PREVENT EVENTS OF DEFAULT.

The failure to make a payment on account of principal of, or premium, if any, or interest on the Securities by reason of any provision of this Article XI shall not be construed as preventing the occurrence of an Event of Default specified in clause (i) or (ii) of Section 6.01.

Section 11.11 TRUSTEE'S COMPENSATION AND RIGHTS TO INDEMNIFICATION NOT PREJUDICED.

Nothing in this Article XI shall apply to amounts due to the Trustee, or its rights to indemnification, pursuant to other sections in this Indenture.

Section 11.12 NO WAIVER OF SUBORDINATION PROVISIONS.

Without in any way limiting the generality of Section 11.08, the holders of Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the holders of the Securities, without incurring responsibility to the holders of the Securities and without impairing or releasing the subordination provided in this Article XI or the obligations hereunder of the holders of the Securities to the holders of Senior Indebtedness, do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew, alter or amend, Senior Indebtedness or any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding or secured; (b) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness; (c) release any Person liable in any manner for the collection of Senior Indebtedness; and (d) exercise or refrain from exercising any rights against the Company and any other Person.

Section 11.13 SUBORDINATION PROVISIONS NOT APPLICABLE TO MONEY HELD IN TRUST FOR HOLDERS; PAYMENTS MAY BE PAID PRIOR TO DISSOLUTION.

All funds deposited in trust with the Paying Agent pursuant to and in accordance with Article XI when permitted pursuant to Article XI shall be for the sole benefit of the holders and shall not be subject to this Article XI.

Nothing contained in this Article XI or elsewhere in this Indenture shall prevent (i) the Company, except under the conditions described in this Article XI, from making payments of principal of, premium, if any, and interest on the Securities or from depositing with the Paying Agent any moneys for such payments or from effecting a termination of the Company's obligations under the Securities and this Indenture as provided in Article VIII, or (ii) the application by the Trustee of any moneys deposited with it or any Paying Agent for the purpose of making such payments of principal of, premium, if any, and interest on the Securities, to the holders entitled thereto unless at least two Business Days prior to the date upon which such payment becomes due and payable, the Trustee shall have received the written notice provided for in Section 11.02(B) or in Section 11.06. The Company shall give prompt written notice to the Trustee of any dissolution, winding-up, liquidation or reorganization of the Company.

Section 11.14 ACCELERATION OF SECURITIES.

If payment of the Securities is accelerated because of an Event of Default, the Company shall promptly notify holders of the Senior Indebtedness of the acceleration.

Section 11.15 CERTAIN CONVERSIONS AND REPURCHASES NOT DEEMED PAYMENT.

For the purposes of this Article XI only, the issuance and delivery of Junior Securities, if any, upon conversion of Securities in accordance with, and the payment, issuance or delivery of cash, property or securities upon conversion of a Security as a result of any transaction pursuant to, Section 10.01 shall not be deemed to constitute a payment or distribution on account of the principal of, premium, if any, or interest on Securities or on account of the purchase or other acquisition of Securities. For the purposes of this Article XI, the term "**Junior Securities**" means (a) Common Stock of the Company, or (b) securities of the Company that are subordinated in right of payment to all Senior Indebtedness that may be outstanding at the time of issuance or delivery of such securities to at least the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article XI. Nothing contained in this Article XI or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors (other than holders of Senior Indebtedness) and the Securityholders, the right, which is absolute and unconditional, of the holder of any Security to convert such Security in accordance with Section 10.01.

ARTICLE XII.

GUARANTEES

Section 12.01 UNCONDITIONAL GUARANTEE.

By its execution of a supplemental indenture substantially in the form included in Exhibit D hereto, each Guarantor shall acknowledge and agree that it receives substantial benefits from the Company and that such party is providing its Guarantee for good and valuable consideration, including, without limitation, such substantial benefits and services. Accordingly, each Guarantor hereby unconditionally, jointly and severally, guarantees (each, a "**Guarantee**") to each holder of a Security authenticated by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity regularity, or enforceability of this Indenture, the Securities or the obligations of the Company hereunder, that: (a) the principal of, premium, if any, and interest on the Securities will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal and interest on any overdue interest on the Securities and all other obligations of the Company to the Holders or the Trustee hereunder or under the Securities will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

Each Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Securities or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Securityholder with respect to any provisions hereof or thereof, the recovery of any

judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenants that the Guarantee will not be discharged except by complete performance of the obligations contained in the Securities, this Indenture, and this Guarantee.

If any Securityholder or the Trustee is required by any court or otherwise to return to the Company, any Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Company or any Guarantor, any amount paid by the Company or any Guarantor to the Trustee or such Securityholder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Guarantor further agrees that, as between each Guarantor, on the one hand, and the Securityholders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article VI for the purpose of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any acceleration of such obligations as provided in Article VI, such obligations (whether or not due and payable) shall forth become due and payable by each Guarantor for the purpose of this Guarantee.

Section 12.02 SEVERABILITY.

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

Section 12.03 DISCHARGE; REINSTATEMENT.

(A) Subject to Section 4.12 and Section 12.03(B), the Guarantor's obligations hereunder will remain in full force and effect until the principal of, premium, if any, and interest on the Securities and all other amounts payable by the Company under the Indenture have been paid in full. Subject to Section 4.12 and Section 12.03(B), if at any time any payment of the principal of, premium, if any, or interest on any Security or any other amount payable by the Company under the Indenture is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Company or otherwise, the Guarantor's obligations hereunder with respect to such payment will be reinstated as though such payment had been due but not made at such time.

(B) A Guarantor shall be automatically and unconditionally released and discharged of its Guarantee and its obligations in respect of this Indenture and the Securities without any action required on the part of the Trustee or any Holder of Securities (i) subject to compliance with Section 12.08 upon any sale or other disposition of that Guarantor or all or substantially all of the assets of that Guarantor (including by way of merger or consolidation or any sale of all of the capital stock of that Guarantor) to a Person that is not the Company or a Subsidiary of the Company; and (ii) at such time as such Guarantor's guarantee of such other senior subordinated Indebtedness is released or discharged, or, at the Company's option, if the Guarantor is not a guarantor of such other senior subordinated Indebtedness.

Section 12.04 LIMITATION OF GUARANTORS' LIABILITY.

Each Guarantor, and by its acceptance hereof and of the Securities, each Holder hereby confirms that it is the intention of all such parties that the Guarantee by such Guarantor pursuant to its Guarantee not constitute a fraudulent transfer or conveyance for purposes of title 11 of the United States Code, as amended, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar U.S. federal or state or other applicable law. To effectuate the foregoing intention, the Trustee, the Holders and each Guarantor hereby irrevocably agree that the obligations of such Guarantor under its Guarantee shall be limited in amount to the lesser of (a) the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor (including any Senior Indebtedness incurred after the Issue Date) and after giving effect to any collections from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to Section 12.05, result in the obligations of such Guarantor under its Guarantee not constituting such a fraudulent transfer or conveyance and (b) the maximum amount as will not render the Guarantee an improper corporate distribution by such Guarantor under applicable state laws.

Section 12.05 CONTRIBUTION.

In order to provide for just and equitable contribution among the Guarantors, the Guarantors agree, inter se, that in the event any payment or distribution is made by any Guarantor (a “**Funding Guarantor**”) under the Guarantee, such Funding Guarantor shall be entitled to a contribution from all other Guarantors in a pro rata amount, based on the net assets of each Guarantor (including the Funding Guarantor), determined in accordance with the United States generally accepted accounting principles, subject to Section 12.04, for all payments, damages and expenses incurred by such Funding Guarantor in discharging the Company’s obligations with respect to the Securities or any other Guarantor’s obligations with respect to the Guarantee.

Section 12.06 EXECUTION OF GUARANTEE.

To evidence its Guarantee set forth in Section 12.01, each of the Guarantors agrees that a notation of its Guarantee substantially in the form included in Exhibit E hereto shall be endorsed on each Security authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of such Guarantor by an Officer of such Guarantor. Each of the Guarantors agree that its Guarantee set forth in this Article XII shall remain in full force and effect and apply to all the Securities notwithstanding any failure to endorse on each Security a notation of its Guarantee. If an Officer whose facsimile signature is on a Security or a notation of Guarantee no longer holds that office at the time the Trustee authenticates the Security on which the Guarantee is endorsed, the Guarantee shall be valid nevertheless. The delivery of any Security by the Trustee after authentication constitutes due delivery of such Guarantee set forth in the Indenture on behalf of such Guarantor.

Section 12.07 SUBORDINATION OF SUBROGATION AND OTHER RIGHTS.

Each Guarantor hereby agrees that any claim against the Company that arises from the payment, performance or enforcement of such Guarantor’s obligations under its Guarantee or this Indenture, including, without limitation, any right of subrogation, shall be subject and subordinate to, and no payment with respect to any such claim of such Guarantor shall be made before, the payment in full in cash of all outstanding Securities in accordance with the provisions provided therefor in this Indenture.

Section 12.08 CONSOLIDATION, MERGER OR SALE OF ASSETS BY A GUARANTOR.

(A) A Guarantor may not sell, convey, assign, transfer, lease or otherwise dispose of all or substantially all of its assets, or consolidate with or merge with or into (whether or not such Guarantor is the surviving person), another person unless:

(i) immediately after giving effect to that transaction, no Event of Default exists; and

(ii) the person acquiring the property in any such sale or disposition or the person formed by or surviving any such consolidation or merger (if other than the Guarantor) assumes all the obligations of that Guarantor pursuant to a supplemental indenture reasonably satisfactory to the Trustee.

(B) In case of any such transaction described in and complying with the conditions listed in Section 12.08(A) in which the Guarantor is not the surviving person and upon the assumption by the surviving person of all the obligations of such Guarantor under its Guarantee, this Indenture, pursuant to a supplemental indenture executed and delivered to the Trustee and reasonably satisfactory in form to the Trustee, such surviving person shall succeed to, and be substituted for, and may exercise every right and power of the Guarantor and the Guarantor shall be discharged from its obligations under this Indenture and the Securities.

Section 12.09 GUARANTEE OBLIGATIONS SUBORDINATED TO GUARANTOR SENIOR INDEBTEDNESS.

Each Guarantor covenants and agrees, and the Trustee and each Securityholder by the acceptance thereof likewise covenant and agree, that the Guarantee of such Guarantor shall be issued subject to the provisions of this Article XII; and each person holding any Security, whether upon original issue or upon transfer, assignment or

exchange thereof, accepts and agrees that all payments of the principal of, premium, if any, and interest on (and other obligations, if any, with respect to) the Securities pursuant to the Guarantee made by or on behalf of any Guarantor shall, to the extent and in the manner set forth in this Article XII, be subordinated and junior in right of payment to the prior payment in full in cash of all obligations arising under Senior Indebtedness of such Guarantor. The Guarantee shall be contractually equal in right of payment to such Guarantor's other existing and future senior subordinated indebtedness.

Section 12.10 PAYMENT OVER OF PROCEEDS UPON DISSOLUTION, ETC.

(A) Upon any payment or distribution of assets or securities of any Guarantor of any kind or character, whether in cash, property or securities to the creditors of such Guarantor, upon any dissolution or winding-up or total liquidation or reorganization of such Guarantor, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other similar proceedings relating to such Guarantor, any assignment for the benefit of creditors or any marshalling of such Guarantor's assets and liabilities, the holders of Senior Indebtedness of such Guarantor shall be entitled to receive in full in cash of all obligations due in respect of such Senior Indebtedness of such Guarantor (including interest accruing after, or which would accrue but for the commencement of any proceeding at the rate specified in the applicable Senior Indebtedness, whether or not a claim for such interest would be allowed), or have provision made for such payment in a manner acceptable to holders of such Senior Indebtedness of such Guarantor, before the holders of the Securities or the Trustee on behalf of such holders shall be entitled to receive any payment by the Guarantor of the principal of, premium, if any, or interest on (and other obligations, if any, with respect to) the Securities pursuant to such Guarantor's Guarantee, or any payment by such Guarantor to acquire any of the Securities for cash, property or securities, or any distribution by such Guarantor with respect to the Securities of any cash, property or securities (in each case, other than payments in Junior Securities).

(B) In the event that, notwithstanding the foregoing provision prohibiting such payment or distribution, any payment or distribution of assets or securities of any Guarantor of any kind or character, whether in cash, property or securities (in each case, other than Junior Securities), shall be received by the Trustee, any Paying Agent or any Securityholder at a time when such payment or distribution is prohibited by Section 12.10(A) and before all obligations in respect of the Senior Indebtedness of such Guarantor are paid in full in cash (or such payment shall be duly provided for in a manner satisfactory to the holders of Senior Indebtedness of such Guarantor) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash, such payment or distribution shall be received and held in trust for the benefit of, and shall be paid over or delivered to, the holders of such Guarantor Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of such Guarantor Senior Indebtedness held by such holders) or their respective representatives, or to the trustee or trustees or agent or agents under any indenture or agreement pursuant to which any of such Guarantor Senior Indebtedness may have been issued or incurred, as their respective interests may appear, for application to the payment of such Guarantor Senior Indebtedness remaining unpaid until all such Guarantor Senior Indebtedness has been paid in full in cash (or such payment shall be duly provided for in a manner satisfactory to the holders of Senior Indebtedness of such Guarantor) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash, after giving effect to any prior or concurrent payment, distribution or provision therefor to or for the holders of such Guarantor Senior Indebtedness.

The consolidation of any Guarantor with, or the merger of any Guarantor with or into, another corporation or limited liability company or the liquidation or dissolution of any Guarantor following the sale, conveyance, transfer or lease of its property as an entirety, or substantially as an entirety, to another corporation or upon the terms and conditions provided in Article V shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 12.10 if such other corporation shall, as a part of such consolidation, merger, sale, conveyance, transfer or lease comply with the conditions stated in Article V.

Section 12.11 SUBROGATION.

Upon the payment in full in cash (or such payment shall be duly provided for in a manner satisfactory to the holders of Senior Indebtedness of such Guarantor) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash, of all Guarantor Senior Indebtedness of a Guarantor, the holders of the Securities shall be subrogated to the rights of the holders of such Guarantor Senior Indebtedness to receive payments or distributions of cash, cash equivalents, property or securities

of such Guarantor made on such Guarantor Senior Indebtedness until the principal of, premium, if any, and interest on the Securities shall be paid in full in cash or the Guarantee is no longer outstanding; and, for the purposes of such subrogation, no payments or distributions to the holders of such Guarantor Senior Indebtedness of any cash, cash equivalents, property or securities to which the holders of the Securities or the Trustee on their behalf would be entitled except for the provisions of this Article XII and no payment over pursuant to the provisions of this Article XII to the holders of such Guarantor Senior Indebtedness by holders of the Securities or the Trustee on their behalf shall, as between such Guarantor, its creditors other than holders of such Guarantor Senior Indebtedness, and the holders of the Securities, be deemed to be a payment by such Guarantor to or on account of such Guarantor Senior Indebtedness. It is understood that the provisions of this Article XII 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 the Senior Indebtedness of each Guarantor, on the other hand.

If any payment or distribution to which the holders of the Securities would otherwise have been entitled but for the provisions of this Article XII shall have been applied, pursuant to the provisions of this Article XII, to the payment of all amounts payable under Guarantor Senior Indebtedness, then and in such case, the holders of the Securities shall be entitled to receive from the holders of such Guarantor Senior Indebtedness any payments or distributions received by such holders of Guarantor Senior Indebtedness in excess of the amount required to make payment in full in cash of such Guarantor Senior Indebtedness (or such payment shall be duly provided for in a manner satisfactory to the holders of Senior Indebtedness of such Guarantor) or otherwise to the extent holders of Senior Indebtedness in their sole discretion accept satisfaction of amounts due by settlement in other than cash.

Section 12.12 OBLIGATIONS OF GUARANTORS UNCONDITIONAL.

Subject to Section 12.04, nothing contained in this Article XII or elsewhere in this Indenture or in the Securities or the Guaranties is intended to or shall impair, as among each of the Guarantors and the Holders of the Securities, the obligation of each Guarantor, which is absolute and unconditional, to pay to the Holders of the Securities the principal of, premium on and interest on the Securities as and when the same shall become due and payable in accordance with the terms of the Guarantee of such Guarantor, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of any Guarantor other than the holders of the Senior Indebtedness of such Guarantor, nor shall anything herein or therein prevent the Holder of any Security or the Trustee on their behalf from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article XII of the holders of Guarantor Senior Indebtedness in respect of cash, cash equivalents, property or securities of any Guarantor received upon the exercise of any such remedy.

Without limiting the generality of the foregoing, nothing contained in this Article XII shall restrict the right of the Trustee or the Holders of Securities to take any action to declare the Securities to be due and payable prior to their stated maturity pursuant to Section 6.02 or to pursue any rights or remedies hereunder; provided, however, that all Senior Indebtedness of any Guarantor then due and payable shall first be paid in full in cash (including Post-Petition Interest), or have provision made for such payment in a manner satisfactory to the holders of such Senior Indebtedness of such Guarantor, before the Holders of the Securities or the Trustee are entitled to receive any direct or indirect payment from such Guarantor of principal of, premium and interest on (and other obligations, if any, with respect to) the Securities pursuant to such Guarantor's Guarantee.

Section 12.13 NOTICE TO TRUSTEE.

The Company shall give prompt written notice to the Trustee of any fact known to the Company or any Guarantor 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 XII. Unless the Trustee has failed to give notice of its change of address pursuant to Section 14.02 hereof, the Trustee shall not be charged with knowledge of the existence of any event of default with respect to any Guarantor Senior Indebtedness or of any other facts which would prohibit the making of any payment to or by the Trustee unless and until the Trustee shall have received notice in writing at its Corporate Trust Office to that effect signed by an Officer of the Company or such Guarantor, or by a holder of Guarantor Senior Indebtedness or trustee or agent therefor; and prior to the receipt of any such written notice, the Trustee, subject to the provisions of Article VII, shall be entitled to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section 12.13 at least two Business Days prior to the date upon which

by the terms of this Indenture any moneys shall become payable for any purpose (including, without limitation, the payment of the principal of, premium, if any, or interest on any Security) , then, regardless of anything herein to the contrary, the Trustee shall have full power and authority to receive any moneys from any Guarantor and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date. Nothing contained in this Section 12.13 shall limit the right of the holders of Guarantor Senior Indebtedness to recover payments as contemplated by Section 12.10 or from any holder under Section 12.09(B). The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or itself to be a holder of any Guarantor Senior Indebtedness (or a trustee on behalf of, or agent or other representative of, such holder) to establish that such notice has been given by a holder of such Guarantor Senior Indebtedness or a trustee, or agent or representative on behalf of any such holder. A holder of Senior Indebtedness of such Guarantor and any trustee, agent or other representative on behalf of such holder shall be entitled to deliver all notices required by this Section 12.13 or otherwise pursuant to this Article XII to the address of the Trustee set forth herein unless such holder or the trustee, agent or representative of such holder shall have received actual written notice of a change of address of the Trustee.

In the event that the Trustee determines in good faith that any evidence is required with respect to the right of any Person as a holder of Guarantor Senior Indebtedness to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Guarantor 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 XII, 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 12.14 RELIANCE ON JUDICIAL ORDER OR CERTIFICATE OF LIQUIDATING AGENT.

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

Section 12.15 TRUSTEE'S RELATION TO GUARANTOR SENIOR INDEBTEDNESS.

The Trustee and any Paying Agent shall be entitled to all the rights set forth in this Article XII with respect to any Guarantor Senior Indebtedness which may at any time be held by it in its individual or any other capacity to the same extent as any other holder of Guarantor Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee or any Paying Agent of any of its rights as such holder.

With respect to the holders of Guarantor Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article XII, and no implied covenants or obligations with respect to the holders of Guarantor Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Guarantor Senior Indebtedness. The Trustee shall not be liable to any such holders if the Trustee shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other person cash, property or securities to which any holders of Guarantor Senior Indebtedness shall be entitled by virtue of this Article XII or otherwise.

Section 12.16 SUBORDINATION RIGHTS NOT IMPAIRED BY ACTS OR OMISSIONS OF THE GUARANTORS OR HOLDERS OF GUARANTOR SENIOR INDEBTEDNESS.

No right of any present or future holders of any Guarantor Senior Indebtedness to enforce subordination as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any

Guarantor or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by any Guarantor with the terms of this Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with. The provisions of this Article XII are intended to be for the benefit of, and shall be enforceable directly by, the holders of Guarantor Senior Indebtedness.

Section 12.17 HOLDERS AUTHORIZE TRUSTEE TO EFFECTUATE SUBORDINATION OF GUARANTEE.

Each Holder of Securities by its acceptance of such Securities authorizes and expressly directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article XII, and appoints the Trustee its attorney-in-fact for such purposes, including, in the event of any dissolution, winding-up, total liquidation or reorganization of any Guarantor (whether in bankruptcy, insolvency, receivership, reorganization or similar proceedings or upon an assignment for the benefit of creditors or otherwise) tending towards liquidation of the business and assets of such Guarantor, the filing of a claim for the unpaid balance of its or his Securities in the form required in those proceedings.

Section 12.18 THIS ARTICLE NOT TO PREVENT EVENTS OF DEFAULT.

The failure to make a payment on account of principal of, or premium, if any, or interest on the Securities by reason of any provision of this Article XII shall not be construed as preventing the occurrence of an Event of Default specified in clauses (i) or (ii) of Section 6.01.

Section 12.19 TRUSTEE'S COMPENSATION NOT PREJUDICED.

Nothing in this Article XII shall apply to amounts due to the Trustee, or its right to indemnification, pursuant to other sections in this Indenture.

Section 12.20 NO WAIVER OF GUARANTEE SUBORDINATION PROVISIONS.

Without in any way limiting the generality of Section 12.16 the holders of Guarantor Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to the Holders of the Securities and without impairing or releasing the subordination provided in this Article XII or the obligations hereunder of the holders of the Securities to the holders of Guarantor Senior Indebtedness, do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew, alter or amend, Guarantor Senior Indebtedness or any instrument evidencing the same or any agreement under which Guarantor Senior Indebtedness is outstanding or secured; (b) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Guarantor Senior Indebtedness; (c) release any Person liable in any manner for the collection of Guarantor Senior Indebtedness; and (d) exercise or refrain from exercising any rights against any Guarantor and any other Person.

Section 12.21 PAYMENTS MAY BE PAID PRIOR TO DISSOLUTION.

Nothing contained in this Article XII or elsewhere in this Indenture shall prevent (i) a Guarantor, except under the conditions described in Section 12.10, from making payments of principal of, premium, if any, and interest on the Securities, or from depositing with the Paying Agent any moneys for such payments, or (ii) the application by the Trustee of any moneys deposited with it or any Paying Agent for the purpose of making such payments of principal of, premium, if any, and interest on the Securities, to the holders entitled thereto unless at least two Business Days prior to the date upon which such payment becomes due and payable, the Trustee shall have received the written notice provided for in Sections 12.10(B) or 12.13. The Guarantors shall give prompt written notice to the Trustee of any dissolution, winding-up, liquidation or reorganization of such Guarantor.

ARTICLE XIII.

TAX TREATMENT

Section 13.01 TAX TREATMENT.

The Company hereby agrees and by purchasing an interest in a Security, each Holder and each Person (including an entity) that acquires a direct or indirect beneficial interest in the Security hereby agrees that such Person shall (except to the extent otherwise required by final administrative or judicial determinations to the contrary):

(A) treat the Securities as indebtedness of the Company for all U.S. federal income tax purposes;

(B) treat the Securities as debt instruments that are subject to Treasury Regulation section 1.1275-4 (the “CPDI Regulations”);

(C) treat the delivery of Common Stock or cash (including cash delivered in lieu of a fractional share) to a Holder of a Security upon conversion, repurchase or redemption of such Security, as a contingent payment (in an amount equal to the sum of the fair market value of such Common Stock and any cash received) under the CPDI Regulations; and

(D) treat accrued interest with respect of the Securities (irrespective of whether or not actually paid) as ordinary income for U.S. federal income tax purposes to the extent required by the CPDI Regulations, and treat any gains realized on sale, exchange, conversion, repurchase or redemption of the Securities as ordinary income for U.S. federal income tax purposes to the extent required by the CPDI Regulations.

Section 13.02 COMPARABLE YIELD AND PROJECTED PAYMENT SCHEDULE.

Solely for purposes of applying Treasury Regulation section 1.1275-4 to the Securities:

(A) for U.S. federal income tax purposes, the Company shall accrue interest with respect to outstanding Securities as original issue discount according to the “noncontingent bond method,” as set forth in the CPDI Regulations, using a comparable yield of 7.375%, compounded semiannually, and the projected payment schedule as determined by the Company and as attached as Exhibit C hereto;

(B) the Company shall file with the Trustee promptly at the end of each calendar year (A) a written notice specifying the amount of original issue discount for United States federal income tax purposes accrued on outstanding Securities as of the end of such year and (B) such other specific information relating to such original issue discount that the Company determines to be relevant under the Internal Revenue Code of 1986, as amended from time to time, including the amount of any adjustment made under the noncontingent bond method to account for the amount of any difference between the amount of an actual payment and the amount of a projected payment; and

(C) the Company acknowledges and agrees, and each Holder and any beneficial holder of a Security by its purchase of a Security shall be deemed to acknowledge and agree that (A) the comparable yield and projected payment schedule are determined on a basis of an assumption of linear growth of stock price and a constant growth in dividend yield, (B) the comparable yield and the projected payment schedule are not determined for any purpose other than for the purpose of applying the CPDI Regulations to the Security, (C) the comparable yield and the projected payment schedule do not constitute a projection or representation regarding the future stock price or the actual amounts payable on the Securities, and (D) the Company’s application of the CPDI Regulations, including the Company’s determination of the comparable yield and the projected payment schedule, as attached as Exhibit C hereto, shall be binding on each Holder and any beneficial holder of a Security (except to the extent otherwise required by final administrative or judicial determinations to the contrary).

Section 13.03 TAX WITHHOLDING OBLIGATIONS.

By purchasing an interest in a Security, each Holder and each Person (including an entity) that acquires a direct or indirect beneficial interest in a Security hereby agrees:

(A) that the Company may withhold any tax, to the extent it is required to do so under any law or regulation (whether based on accrued, constructive or cash income), from any payments of cash or shares of Common Stock (including Common Stock to be paid upon conversion) to be made to a Holder or Person holding a direct or indirect beneficial interest in a Security or in shares of Common Stock received upon conversion of a Security; and

(B) that if the Company pays any withholding taxes on behalf of a Holder or Person holding a direct or indirect beneficial interest in a Security, as a result of an adjustment to the Conversion Rate or a failure to make an adjustment to the Conversion Rate, the Company may, in its discretion, reduce any payments to such Holder or Person of cash or shares of Common Stock (including any Common Stock to be paid upon conversion) on the Security by the amounts of any such withholding taxes paid.

ARTICLE XIV.

MISCELLANEOUS

Section 14.01 TRUST INDENTURE ACT CONTROLS.

If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision of the TIA shall control.

Section 14.02 NOTICES.

Any notice or communication by the Company or the Trustee to one another shall be deemed to be duly given if made in writing and delivered:

(A) by hand (in which case such notice shall be effective upon delivery);

(B) by facsimile (in which case such notice shall be effective upon receipt of confirmation of good transmission thereof); or

(C) by overnight delivery by a nationally recognized courier service (in which case such notice shall be effective on the Business Day immediately after being deposited with such courier service),

in each case to the other party's address or facsimile number, as applicable, set forth in this Section 14.02. Each of the Company and the Trustee, by notice to the others, may designate additional or different addresses or facsimile numbers for subsequent notices or communications.

Any notice or communication to a Holder shall be mailed to its address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

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

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee at the same time. If the Trustee is required, pursuant to the express terms of this Indenture or the Securities, to mail a notice or communication to Holders, the Trustee shall also mail a copy of such notice or communication to the Company.

All notices or communications shall be in writing.

The Company's address is:

Itron, Inc.
2818 North Sullivan Road
Spokane Valley, Washington 99216
Attention: Chief Financial Officer
Facsimile: (509) 891-3334
Phone: (509) 924-9900

The Trustee's address is:

Deutsche Bank Trust Company Americas
60 Wall Street, 27th Floor
Mail Stop: NYC60-2710
New York, New York 10005
Attention: Trust & Securities Services
with a copy to:

Deutsche Bank National Trust Company
Trust & Securities Services
25 DeForest Avenue
Mail Stop: SUJ01-0105
Summit, New Jersey 07901

Section 14.03 COMMUNICATION BY HOLDERS WITH OTHER HOLDERS.

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

Section 14.04 CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(i) an Officer's Certificate stating that, in the opinion of the signatories to such Officer's Certificate, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

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

Each signatory to an Officer's Certificate or an Opinion of Counsel may (if so stated) rely, effectively, upon an Opinion of Counsel as to legal matters and an Officer's Certificate or certificates of public officials as to factual matters if such signatory reasonably and in good faith believes in the accuracy of the document relied upon.

Section 14.05 STATEMENTS REQUIRED IN CERTIFICATE OR OPINION.

Each Officer's Certificate or Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:

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

(ii) 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;

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

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

Section 14.06 RULES BY TRUSTEE AND AGENTS.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar, Paying Agent and Conversion Agent may make reasonable rules and set reasonable requirements for their respective functions.

Section 14.07 LEGAL HOLIDAYS.

A “**Legal Holiday**” is a Saturday, a Sunday or a day on which banking institutions are not required to be open in the City of New York, in the State of New York or in the city in which the Trustee administers its corporate trust business. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on that payment for the additional period of time.

A “**Business Day**” is a day other than a Legal Holiday.

Section 14.08 DUPLICATE ORIGINALS.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed counterpart by facsimile shall be effective as delivery of a manually executed counterpart thereof.

Section 14.09 GOVERNING LAW.

THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE SECURITIES AND THE GUARANTEES, INCLUDING WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(B).

Section 14.10 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

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

Section 14.11 SUCCESSORS.

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

Section 14.12 SEPARABILITY.

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 and a Holder shall have no claim therefor against any party hereto.

Section 14.13 TABLE OF CONTENTS, HEADINGS, ETC.

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

Section 14.14 CALCULATIONS IN RESPECT OF THE SECURITIES.

The Company and its agents shall make all calculations under this Indenture and the Securities (including, without limitation, the Trading Price, the Closing Sale Price, the Current Market Price, the Daily Principal Returns, the Daily Conversion Values, the Daily Net Shares, the Conversion Price and any adjustments to the Conversion Rate pursuant hereto and the amount of interest payable on the Securities) in good faith. In the absence of manifest error, such calculations shall be final and binding on all Holders. The Company shall provide a copy of such calculations to the Trustee as required hereunder, and, absent such manifest error, each of the Trustee shall be entitled to rely on the accuracy of any such calculation without independent verification. Neither the Trustee nor the Conversion Agent shall have any obligation to calculate or determine or verify the calculation or determination of the Trading Price, the Closing Sale Price, the Current Market Price, the Conversion Rate, the Conversion Price, the Daily Principal Return, the Daily Conversion Values or the Daily Net Shares.

Section 14.15 NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES OR STOCKHOLDERS.

None of the Company's past, present or future directors, officers, employees or shareholders, as such, shall have any liability for any of the Company's obligations under this Indenture or the Securities or for any claim based on, or in respect or by reason of, such obligations or their creation. By accepting a Security, each holder waives and releases all such liability. This waiver and release is part of the consideration for the issue of the Securities.

Section 14.16 USA PATRIOT ACT.

The Company acknowledges that, in accordance with Section 326 of the USA Patriot Act, the Trustee, like all financial institutions, is required to obtain, verify and record information that identifies each person or legal entity that opens an account. The Company agrees that it will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA Patriot Act.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

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

ITRON, INC.

By: /s/ LeRoy D. Nosbaum

Name: LeRoy D. Nosbaum

Title: Chairman and CEO

**DEUTSCHE BANK TRUST COMPANY AMERICAS, as
Trustee**

By: Deutsche Bank National Trust Company

By: /s/ Yana Kalachikova

Name: Yana Kalachikova

Title: Assistant Vice President

By: /s/ Rodney Gaughan

Name: Rodney Gaughan

Title: Assistant Vice President

[Face of Security]

ITRON, INC.

Certificate No.

[INSERT GLOBAL SECURITY LEGEND, AND TAX LEGEND, AS REQUIRED]

2.50% Convertible Senior Subordinated Note due 2026

CUSIP No. 465741 AJ 5

Itron, Inc., a Washington corporation (the “**Company**”), for value received, hereby promises to pay to Cede & Co., or its registered assigns, the principal sum of _____ dollars (\$) on August 1, 2026 and to pay interest thereon, as provided on the reverse hereof, until the principal and any unpaid and accrued interest are paid or duly provided for.

Interest Payment Dates: February 1 and August 1, with the first payment to be made on February 1, 2007.

Record Dates: January 15 and July 15.

The provisions on the back of this certificate are incorporated as if set forth on the face hereof.

IN WITNESS WHEREOF, Itron, Inc. has caused this instrument to be duly signed.

ITRON, INC.

By: _____
Name: _____
Title: _____

Dated:

CERTIFICATE OF AUTHENTICATION

This is one of the Securities referred to in the within-mentioned Indenture.
Deutsche Bank Trust Company Americas, as Authenticating Agent

By: Deutsche Bank National Trust Company

By: _____
Authorized Signatory

Dated:

ITRON, INC.

2.50% Convertible Senior Subordinated Note due 2026

1. **Interest.** Itron, Inc., a Washington corporation (the “**Company**”), promises to pay interest on the principal amount of this Security at the rate per annum shown above. The Company will pay interest, payable semi-annually in arrears, on February 1 and August 1 of each year, with the first payment to be made on February 1, 2007. Interest on the Securities will accrue on the principal amount from, and including, the most recent date to which interest has been paid or provided for or, if no interest has been paid, from, and including, August 4, 2006, in each case to, but excluding, the next interest payment date or Maturity Date, as the case may be. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

In addition, if the average Contingent Interest Trading Price of a Security for the five (5) consecutive trading day period (the “**Contingent Interest Measurement Period**”) immediately preceding the first day of any six (6) month period (each a “**Contingent Interest Period**”) from and including an interest payment date to but excluding the next interest payment date, commencing with the six (6) month period beginning August 1, 2011, is equal to or greater than one hundred and twenty percent (120%) of the principal amount of such Security, then the Company shall pay contingent interest (“**Contingent Interest**”) to the Holders.

The amount of Contingent Interest payable per \$1,000 principal amount of Securities in respect of any Contingent Interest Period, if applicable, shall be equal to 0.19% (0.38% per year payable semi-annually) of the average Contingent Interest Trading Price per \$1,000 principal amount of the Securities during the Contingent Interest Measurement Period. Contingent Interest shall accrue from the first day of the applicable Contingent Interest Period through, but excluding, the interest payment date at the end of such Contingent Interest Period, and Contingent Interest shall be payable to Holders in the same manner as regular cash interest. Regular cash interest shall continue to accrue at the *per annum* rate of 2.50% on the principal amount of the Securities whether or not Contingent Interest is paid.

The Company shall instruct the Bid Solicitation Agent to determine the daily Contingent Interest Trading Prices of the Securities during each Contingent Interest Measurement Period during which any Securities are outstanding. Upon determining that the Securities shall begin to accrue Contingent Interest during a Contingent Interest Period, the Company shall, on or before the start of such Contingent Interest Period, publicly announce, through a reputable national newswire service, and publish on the Company’s website, the fact that Contingent Interest has become payable and the amount of such Contingent Interest payable per \$1,000 principal amount of Securities.

The “**Contingent Interest Trading Price**” of a Security on any trading day means the average secondary market bid quotations obtained by the Bid Solicitation Agent for five million dollars (\$5,000,000) principal amount of Securities at approximately 4:00 p.m., New York City time, on such trading day from three (3) independent nationally recognized securities dealers selected by the Company; *provided, however*, that if the Bid Solicitation Agent can reasonably obtain only two (2) such bids, then the average of such two (2) bids shall instead be used, and if the Bid Solicitation Agent can reasonably obtain only one (1) such bid, then such one (1) bid shall be used; *provided further*, that if the Bid Solicitation Agent cannot reasonably obtain at least one (1) such bid, then the Contingent Interest Trading Price per \$1,000 principal amount of the notes shall be determined by a nationally recognized securities dealer retained by the Company for such purpose.

2. **Maturity.** The Securities will mature on August 1, 2026.

3. **Method of Payment.** Except as provided in the Indenture (as defined below), the Company will pay interest on the Securities to the persons who are Holders of record of Securities at the close of business on the record date set forth on the face of this Security next preceding the applicable interest payment date; *provided, however*, that on the Maturity Date, the Company will pay interest on the Securities to the Holder to whom the Company pays the principal amount. Holders must surrender Securities to a Paying Agent to collect the principal amount, Redemption Price, Option Purchase Price or Fundamental Change Repurchase Price of the Securities, plus, if

applicable, accrued and unpaid interest, if any, payable as herein provided upon Redemption, Purchase at Holder's Option or Repurchase Upon Fundamental Change, as the case may be. The Company will pay, in money of the United States that at the time of payment is legal tender for payment of public and private debts, all amounts due in cash with respect to the Securities, which amounts shall be paid (A) in the case this Security is in global form, by wire transfer of immediately available funds to the account designated by the Depositary or its nominee; (B) in the case this Security is held, other than global form, by a Holder of more than five million dollars (\$5,000,000) in aggregate principal amount of Securities, by wire transfer of immediately available funds to the account specified by such Holder or, if such Holder does not specify an account, by mailing a check to the address of such Holder set forth in the register of the Registrar; and (C) in the case this Security is held, other than global form, by a Holder of five million dollars (\$5,000,000) or less in aggregate principal amount of Securities, by mailing a check to the address of such Holder set forth in the register of the Registrar. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on that payment for the additional period of time.

4. Paying Agent, Registrar, Conversion Agent. Initially, Deutsche Bank Trust Company Americas (the "Trustee") will act as Paying Agent, Registrar and Conversion Agent. The Company may change any Paying Agent, Registrar, Bid Solicitation Agent or Conversion Agent without notice.

5. Indenture. The Company issued the Securities under an Indenture dated as of August 4, 2006 (the "Indenture") between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbbb) (the "TIA") as amended and in effect from time to time. The Securities are subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of such terms. The Securities are general unsecured senior subordinate obligations of the Company limited to \$300,000,000 aggregate principal amount (\$345,000,000 if the Underwriters have elected to exercise in full the Option to purchase up to an additional \$45,000,000 aggregate principal amount of the Securities), except as otherwise provided in the Indenture (except for Securities issued in substitution for destroyed, mutilated, lost or stolen Securities). Terms used herein without definition and which are defined in the Indenture have the meanings assigned to them in the Indenture.

6. Optional Redemption. The Company shall have the right, at the Company's option, at any time, and from time to time, on a Redemption Date on or after August 1, 2011, to redeem all or any part of the Securities at a price payable in cash equal to one hundred percent (100%) of the principal amount of the Securities to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date, *provided, however*, that in no event shall any Redemption Date be a Legal Holiday; *provided, further*, that if such Redemption Date is after a record date for the payment of an installment of interest and on or before the related interest payment date, then the accrued and unpaid interest, if any, to, but excluding, such interest payment date will be paid on such interest payment date to the Holder of record of such Securities at the close of business on such record date, and the Holder surrendering such Securities for repurchase shall receive only the Redemption Price and shall not be entitled to any such accrued and unpaid interest unless such Holder was also the Holder of record of such Securities at the close of business on such record date. The Company will make at least ten (10) semi-annual interest payments with respect to the Securities prior to redeeming any Securities pursuant to this paragraph.

7. Notice of Redemption. Notice of Redemption will be mailed at least thirty (30) days but not more than sixty (60) days before the Redemption Date to each Holder of Securities to be redeemed at its address appearing in the security register. Securities in denominations larger than \$1,000 principal amount may be redeemed in part but only in integral multiples of \$1,000 principal amount.

8. Purchase by the Company at the Option of the Holder. Subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase, at the option of each Holder, the Securities held by such Holder on August 1, 2011, August 1, 2016 and August 1, 2021 (each, an "Option Purchase Date") at an Option Purchase Price, payable in cash, equal to one hundred percent (100%) of the principal amount of the Securities to be purchased, plus accrued and unpaid interest, if any, to, but excluding, the applicable Option Purchase Date, upon delivery of a Purchase Notice containing the information set forth in the Indenture, at any time from the opening of business on the date that is twenty (20) Business Days prior to the applicable Option Purchase Date until the close of business on the Business Day immediately preceding the applicable Option Purchase Date and upon delivery of the Securities to the Paying Agent by the Holder as set forth in the Indenture; *provided*,

however, that that such accrued and unpaid interest shall be paid to the Holder of record of such Securities at the close of business on the record date immediately preceding such Option Purchase Date and the Holder surrendering such Security for purchase shall receive only the Option Purchase Price and shall not be entitled to any such interest unless such Holder was also the Holder of record of such Security at the close of business on such record date.

9. Repurchase at Option of Holder Upon a Fundamental Change. Subject to the terms and conditions of the Indenture, in the event of a Fundamental Change, each Holder of the Securities shall have the right, at the Holder's option, to require the Company to repurchase such Holder's Securities including any portion thereof which is \$1,000 in principal amount or any integral multiple thereof on a date selected by the Company (the "**Fundamental Change Repurchase Date**"), which date is no later than thirty five (35) days, nor earlier than twenty (20) days, after the date on which notice of such Fundamental Change is mailed in accordance with the Indenture, at a price payable in cash equal to one hundred percent (100%) of the principal amount of such Security, plus accrued and unpaid interest to, but excluding, the Fundamental Change Repurchase Date; *provided, however*, that if such Fundamental Change Repurchase Date is after a record date for the payment of an installment of interest and on or before the related interest payment date, then the accrued and unpaid interest, if any, to, but excluding, such interest payment date will be paid on such interest payment date to the Holder of record of such Securities at the close of business on such record date, and the Holder surrendering such Securities for repurchase shall receive only the Fundamental Change Repurchase Price and shall not be entitled to any such accrued and unpaid interest unless such Holder was also the Holder of record of such Securities at the close of business on such record date.

10. Conversion.

Conversion Based on Closing Sale Price of Common Stock. Subject to earlier Redemption, Purchase at Holder's Option or Repurchase Upon Fundamental Change, Holders may surrender Securities in integral multiples of \$1,000 principal amount for conversion into cash or, at the Company's option, cash and shares of Common Stock on any Business Day of a calendar quarter after the calendar quarter ending September 30, 2006, if the Closing Sale Price for each of twenty (20) or more Trading Days in a period of thirty (30) consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter exceeds one hundred and twenty percent (120%) of the Conversion Price in effect on the last Trading Day of the immediately preceding calendar quarter. Solely for purposes of determining whether the Securities shall have become convertible pursuant to this paragraph, the Board of Directors shall, in its good faith determination, which shall be described in a Board Resolution, make appropriate adjustments to the Closing Sale Prices and/or such Conversion Price used to determine whether the Securities shall have become convertible pursuant to this paragraph to account for any adjustments to the Conversion Rate which shall have become effective, or any event requiring an adjustment to the Conversion Rate where the Ex Date of such event occurs, during the period of thirty (30) consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter.

Conversion Upon Satisfaction of Trading Price Condition. Subject to earlier Redemption, Purchase at Holder's Option or Repurchase Upon Fundamental Change, Holders may surrender Securities in integral multiples of \$1,000 principal amount for conversion into cash or, at the Company's option, cash and shares of Common Stock during the five (5) consecutive Business Days immediately after any five (5) consecutive Trading Day period (such five (5) consecutive Trading Day period, the "**Note Measurement Period**") in which the average Trading Price per \$1,000 principal amount of the Securities was equal to or less than ninety eight percent (98%) of the average Conversion Value (as defined below) during the Note Measurement Period (such condition, the "**Trading Price Condition**"). The Bid Solicitation Agent shall not have any obligation to determine the Trading Price unless the Company has requested such determination in writing, and the Company shall have no obligation to make such request unless a Holder provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of the Securities would be equal to or less than ninety eight percent (98%) of the Conversion Value. Upon receipt of such evidence, the Company shall instruct the Bid Solicitation Agent in writing to determine the Trading Price per \$1,000 principal amount of the Securities for each of the five (5) successive Trading Days immediately after the Company receives such evidence and on each Trading Day thereafter until the first Trading Day on which the Trading Price Condition is no longer satisfied. For purposes of this paragraph, the "**Conversion Value**" per \$1,000 principal amount of Securities, on a given Trading Day, means the product of the Closing Sale Price on such Trading Day and the Conversion Rate in effect on such Trading Day.

Conversion Based on Redemption. A Security, or portion of a Security, which has been called for Redemption pursuant to Section 3.01 of the Indenture and paragraph 6 may be surrendered in integral multiples of \$1,000 principal amount for conversion into cash or, at the Company option, cash and shares of Common Stock; *provided, however,* that such Security or portion thereof may be surrendered for conversion pursuant to this paragraph only until the close of business on the Business Day immediately preceding the Redemption Date.

Conversion Upon Certain Distributions. Subject to earlier Redemption, Purchase at Holder's Option or Repurchase Upon Fundamental Change, if the Company takes any action, or becomes aware of any event, that would require an adjustment to the Conversion Rate pursuant to Sections 10.05(b), 10.05(c), 10.05(d) or 10.05(e) of the Indenture, the Securities may be surrendered for conversion in integral multiples of \$1,000 principal amount into cash, or at the Company's option, cash and shares of Common Stock beginning on the date the Company mails the notice to the Holders as provided in Section 10.10 of the Indenture (or, if earlier, the date the Company is required under the Indenture to mail such notice) and at any time thereafter until the close of business on the Business Day immediately preceding the Ex Date (as defined in Section 10.05(g) of the Indenture) of the applicable transaction or until the Company announces that such transaction will not take place.

Conversion Upon Occurrence of Certain Corporate Transactions. Subject to earlier Redemption, Purchase at Holder's Option or Repurchase Upon Fundamental Change, if either:

(i) a Fundamental Change or a Make-Whole Fundamental Change occurs; or

(ii) the Company is a party to a consolidation, merger or binding share exchange, sale of all or substantially all of the Company's properties and assets or other similar transaction, in each case, pursuant to which the Common Stock would be converted into or exchanged for, or would constitute solely the right to receive, cash, securities or other property,

then, in each case, the Securities may be surrendered for conversion into cash and, if applicable, shares of Common Stock at any time during the period that begins on, and includes, the date that is thirty (30) calendar days prior to the date originally announced by the Company as the anticipated effective date of such Fundamental Change, consolidation, merger or binding share exchange (which anticipated effective date the Company shall disclose, in good faith, in the written notice, public announcement and publication referred to in Section 10.01(C) of the Indenture) and ends on, and includes, the date that is thirty (30) calendar days after the actual effective date of such Fundamental Change, consolidation, merger or binding share exchange; *provided, however,* that if such transaction is a Make-Whole Fundamental Change, then the Securities may also be surrendered for conversion into cash, or, at the Company's option, cash and shares of Common Stock at any time during the Make-Whole Conversion Period applicable to such Make-Whole Fundamental Change; *provided, further,* that if such transaction is a Fundamental Change, then the Securities may also be surrendered for conversion into cash or, at the Company's option, cash and shares of Common Stock at any time until, and including, the Fundamental Change Repurchase Date applicable to such Fundamental Change.

Conversion on or after August 1, 2024 and at any time from July 1, 2011 to August 1, 2011. Subject to earlier Redemption, Purchase at Holder's Option or Repurchase Upon Fundamental Change, the Securities may be surrendered for conversion into cash and, if applicable, shares of Common Stock at any time on or after August 1, 2024 and at any time from, and including, July 1, 2011 to, and including, August 1, 2011.

To convert a Security, a Holder must (1) complete and sign the Conversion Notice, with appropriate signature guarantee, on the back of the Security, (2) surrender the Security to a Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Registrar or Conversion Agent, (4) pay the amount of interest, if any, the Holder must pay in accordance with the Indenture and as described below and (5) pay any tax or duty if required pursuant to the Indenture. A Holder may convert a portion of a Security if the portion is \$1,000 principal amount or an integral multiple of \$1,000 principal amount.

Upon conversion of a Security, the Holder thereof shall be entitled to receive the cash and, if applicable, shares of Common Stock payable upon conversion in accordance with Article X of the Indenture.

The initial Conversion Rate is 15.3478 shares of Common Stock per \$1,000 principal amount of Securities (which results in an effective initial Conversion Price of approximately \$65.16 per share) subject to adjustment in the event of certain circumstances as specified in the Indenture. The Company will deliver cash in lieu of any fractional share. On conversion, no payment or adjustment for any unpaid and accrued interest or Contingent Interest on the Securities will be made. If a Holder surrenders a Security for conversion after the close of business on the record date for the payment of an installment of interest and prior to the related interest payment date, such Security, when surrendered for conversion, must be accompanied by payment of an amount equal to the interest thereon which the registered Holder at the close of business on such record date is to receive (other than overdue interest, if any, that has accrued on such Security), unless such Security has been called for Redemption as described in the Indenture.

The Conversion Rate applicable to each Security that is surrendered for conversion, in accordance with the Securities and Article X of the Indenture, at any time during the Make-Whole Conversion Period with respect to a Make-Whole Fundamental Change shall be increased to an amount equal to the Conversion Rate that would, but for Section 10.14 of the Indenture, otherwise apply to such Security pursuant to Article X of the Indenture, plus an amount equal to the Make-Whole Applicable Increase; *provided, however*, that such increase to the Conversion Rate shall not apply if either (i) such Make-Whole Fundamental Change constitutes a Public Acquirer Fundamental with respect to which the Company shall have duly made, and given full effect to, an election, pursuant to and in accordance with Section 10.14(E) of the Indenture, to make an Acquirer Stock Conversion Right Adjustment; or (ii) such Make-Whole Fundamental Change is announced by the Company but shall not be consummated.

11. Denominations, Transfer, Exchange. The Securities are in registered form, without coupons, in denominations of \$1,000 principal amount and integral multiples of \$1,000 principal amount. The transfer of Securities may be registered and Securities may be exchanged as provided in the Indenture. The Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge shall be made for any such registration of transfer or exchange, but the Company and the Trustee may require payment of a sum sufficient to cover any tax or similar governmental charge that may be imposed in connection with certain transfers or exchanges. The Company or the Trustee, as the case may be, shall not be required to register the transfer of or exchange any Security (i) during a period beginning at the opening of business twenty (20) days before the mailing of a notice of redemption of the Securities selected for Redemption under Section 3.04 of the Indenture and ending at the close of business on the day of such mailing or (ii) for a period of twenty (20) days before selecting, pursuant to Section 3.03 of the Indenture, Securities to be redeemed or (iii) that has been selected for Redemption or for which a Purchase Notice has been delivered pursuant to Section 3.08 or 3.09, and not withdrawn, in accordance with the Indenture, except, in the case of a partial redemption, purchase or repurchase, that portion of Securities not being redeemed or repurchased.

12. Persons Deemed Owners. The registered Holder of a Security may be treated as the owner of such Security for all purposes.

13. Merger or Consolidation. Except as provided in the Indenture, the Company shall not consolidate with, or merge with or into, or sell, transfer, lease, convey or otherwise dispose of all or substantially all of the property or assets of the Company to, another person, whether in a single transaction or series of related transactions, unless (i) such other person is a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia; (ii) such person assumes by supplemental indenture all the obligations of the Company under the Securities and the Indenture; and (iii) immediately after giving effect to the transaction, no Default or Event of Default shall exist.

14. Amendments, Supplements and Waivers. Subject to certain exceptions, the Indenture or the Securities may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the outstanding Securities, and certain existing Defaults or Events of Default may be waived with the consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding. In accordance with the terms of the Indenture, the Company, with the consent of the Trustee, may amend or supplement this Indenture or the Securities without notice to or the consent of any Securityholder: (i) to comply with Section 10.11 of the Indenture and, in accordance with Section 10.14(E) of the Indenture, to give effect to an election, pursuant to such Section 10.14(E), by the Company to make an Acquirer Stock Conversion Right Adjustment with respect to a Public Acquirer Fundamental Change; (ii) to make adjustments in accordance with the

Indenture to the right to convert the Securities upon certain reclassifications or changes in the Common Stock and certain consolidation mergers and binding share exchanges upon the sale, transfer, lease, conveyance or other disposition of all or substantially all the Company's property or assets; (iii) to secure the obligations of the Company in respect of the Securities; (iv) to add to the covenants of the Company described in the Indenture for the benefit of Securityholders or to surrender any right or power conferred upon the Company; (v) to make provisions with respect to adjustments to the Conversion Rate as required by the Indenture or to increase the Conversion Rate in accordance with the Indenture; (vi) to evidence the assumption of the Company's or any Guarantor's Obligations under the Indenture, the Securities or any Guarantees, as the case may be, by a successor upon the Company's or any Guarantor's consolidation or merger or the sale, transfer, lease, conveyance or other disposition of all or substantially all of the Company's or any Guarantor's property or assets in accordance with the Indenture; and (vii) to evidence the release of any Guarantor permitted to be released under the terms of the Indenture or to evidence the addition of any new Guarantor. In addition, the Company and the Trustee may enter into a supplemental indenture without the consent of Holders of the Securities to cure any ambiguity, defect, omission or inconsistency in the Indenture in a manner that does not, individually or in the aggregate with all other modifications made or to be made to the Indenture, adversely affect the rights of any Holder in any material respect.

15. Defaults and Remedies.

If an Event of Default (excluding an Event of Default specified in Section 6.01(ix) or (x) of the Indenture with respect to the Company (but including an Event of Default specified in Section 6.01(ix) or (x) of the Indenture solely with respect to a Significant Subsidiary of the Company or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company)) occurs and is continuing, the Trustee by notice to the Company or the Holders of at least twenty five percent (25%) in principal amount of the Securities then outstanding by notice to the Company and the Trustee may declare the Securities to be due and payable. Upon such declaration, the principal of, and any premium and accrued and unpaid interest (including, without limitation, any Contingent Interest) on, all Securities shall be due and payable immediately. If an Event of Default specified in Section 6.01(ix) or (x) of the Indenture with respect to the Company (excluding, for purposes of this sentence, an Event of Default specified in Section 6.01(ix) or (x) of the Indenture solely with respect to a Significant Subsidiary of the Company or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company) occurs, the principal of, and premium and accrued and unpaid interest (including, without limitation, any Contingent Interest) on, all the Securities shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. The Holders of a majority in aggregate principal amount of the Securities then outstanding by written notice to the Trustee may rescind or annul an acceleration and its consequences if (A) the rescission would not conflict with any order or decree, (B) all existing Events of Default, except the nonpayment of principal, premium or interest (including, without limitation, Contingent Interest) that has become due solely because of the acceleration, have been cured or waived and (C) all amounts due to the Trustee under Section 7.07 of the Indenture have been paid.

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

If a Default or Event of Default occurs and is continuing as to which the Trustee has received written notice pursuant to the provisions of the Indenture, or as to which a Responsible Officer of the Trustee shall have actual knowledge, the Trustee shall mail to each Holder a notice of the Default or Event of Default within thirty (30) days after it occurs unless such Default or Event of Default has been cured or waived. Except in the case of a Default or Event of Default in payment of any amounts due with respect to any Security, the Trustee may withhold the notice if, and so long as it in good faith determines that, withholding the notice is in the best interests of Holders. The Company must deliver to the Trustee an annual compliance certificate.

16. **Subordination.** The indebtedness evidenced by the Securities is, to the extent and in the manner provided in the Indenture, contractually subordinated in right of payment or satisfaction to the prior payment or

satisfaction in full in cash of all Senior Indebtedness of the Company, whether outstanding at the date of the Indenture or thereafter incurred, and this Security is issued subject to the provisions of the Indenture with respect to such subordination. Each holder of this Security, by accepting the same, agrees to and shall be bound by such provisions and authorizes the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and appoints the Trustee as his attorney-in-fact for such purpose.

17. **Guarantee.** This Security is unconditionally guaranteed on an unsecured senior subordinated basis by any subsidiary that executes a Guarantee in accordance with the terms of the Indenture.

18. **Trustee's and Dealings with the Company.** The Trustee and each banking institution, if any, serving as successor Trustee thereunder, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for, the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not Trustee.

19. **No Recourse Against Others.** No past, present or future director, officer, employee or shareholder, as such, of the Company shall have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder, by accepting a Security, waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

20. **Authentication.** This Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent in accordance with the Indenture.

21. **Governing Law.** THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SECURITY, INCLUDING WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(B).

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

THE COMPANY WILL FURNISH TO ANY HOLDER UPON WRITTEN REQUEST AND WITHOUT CHARGE A COPY OF THE INDENTURE. REQUESTS MAY BE MADE TO:

Itron, Inc.
2818 North Sullivan Road
Spokane Valley, Washington 99216
Attention: Chief Financial Officer

I or we assign to

PLEASE INSERT SOCIAL SECURITY OR
OTHER IDENTIFYING NUMBER

(please print or type name and address)

the within Security and all rights thereunder, and hereby irrevocably constitute and appoint

Attorney to transfer the Security on the books of the Company with full power of substitution in the premises.

Dated:

NOTICE: The signature on this assignment must correspond with the name as it appears upon the face of the within Security in every particular without alteration or enlargement or any change whatsoever and be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Registrar.

Signature Guarantee:

CONVERSION NOTICE

To convert this Security in accordance with the Indenture, check the box:

To convert only part of this Security, state the principal amount to be converted (must be in multiples of \$1,000):

\$

If you want the stock certificate representing the shares of Common Stock, if any, issuable upon conversion made out in another person's name, fill in the form below:

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

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

Date:

Signature(s):

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

Signatures guaranteed by::

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agent Medallion Program or in such other guarantee program acceptable to the Trustee).

PURCHASE NOTICE

Certificate No. of Security:

If you want to elect to have this Security purchased by the Company pursuant to Section 3.08 of the Indenture, check the box:

If you want to elect to have this Security purchased by the Company pursuant to Section 3.09 of the Indenture, check the box:

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 3.08 or Section 3.09 of the Indenture, as applicable, state the principal amount to be so purchased by the Company:

\$ _____
(in an integral multiple of \$1,000)

Date:

Signature(s):

(Sign exactly as name(s) appear(s) on the other side of this Section)

Signatures guaranteed by::

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agent Medallion Program or in such other guarantee program acceptable to the Trustee).

GLOBAL SECURITY LEGEND

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) (THE "DEPOSITARY", WHICH TERM INCLUDES ANY SUCCESSOR DEPOSITARY FOR THE CERTIFICATES) TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREIN IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TAX LEGEND

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT, FOR PURPOSES OF SECTIONS 1272, 1273, AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. UPON REQUEST OF THE HOLDER OF THIS NOTE, THE COMPANY WILL PROMPTLY MAKE AVAILABLE TO THE HOLDER OF THIS NOTE, (I) THE ISSUE PRICE OF THE NOTE, (II) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT IN RESPECT THEREOF, (III) THE ISSUE DATE OF THE NOTE, (IV) THE COMPARABLE YIELD OF THE NOTE, AND (V) THE PROJECTED PAYMENT SCHEDULE OF THE NOTE, IN EACH CASE AS DETERMINED UNDER THE ORIGINAL ISSUE DISCOUNT RULES OF THE U.S. INTERNAL REVENUE CODE. PLEASE CONTACT ITRON, INC., ATTN: INVESTOR RELATIONS DEPARTMENT, 2818 N. SULLIVAN ROAD, SPOKANE VALLEY, WA 99216

Projected Payment Schedule

Six Month Period Ending	“Projected Interest Payment per \$1,000 Principal Amount at Maturity of Notes”
February 1, 2007	\$ 12.29
August 1, 2007	\$ 12.50
February 1, 2008	\$ 12.50
August 1, 2008	\$ 12.50
February 1, 2009	\$ 12.50
August 1, 2009	\$ 12.50
February 1, 2010	\$ 12.50
August 1, 2010	\$ 12.50
February 1, 2011	\$ 12.50
August 1, 2011	\$ 12.50
February 1, 2012	\$ 12.50
August 1, 2012	\$ 12.50
February 1, 2013	\$ 12.50
August 1, 2013	\$ 12.50
February 1, 2014	\$ 12.50
August 1, 2014	\$ 14.83
February 1, 2015	\$ 14.91
August 1, 2015	\$ 15.00
February 1, 2016	\$ 15.09
August 1, 2016	\$ 15.19
February 1, 2017	\$ 15.29
August 1, 2017	\$ 15.39
February 1, 2018	\$ 15.50
August 1, 2018	\$ 15.61
February 1, 2019	\$ 15.72
August 1, 2019	\$ 15.84
February 1, 2020	\$ 15.96
August 1, 2020	\$ 16.09
February 1, 2021	\$ 16.22
August 1, 2021	\$ 16.35
February 1, 2022	\$ 16.50
August 1, 2022	\$ 16.64
February 1, 2023	\$ 16.79
August 1, 2023	\$ 16.95
February 1, 2024	\$ 17.12
August 1, 2024	\$ 17.28
February 1, 2025	\$ 17.46
August 1, 2025	\$ 17.64
February 1, 2026	\$ 17.83
August 1, 2026	\$ 3,033.04

Comparable Yield is 7.375%

**FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY GUARANTORS**

Supplemental Indenture (this "Supplemental Indenture"), dated as of _____, among _____ (the "Guaranteeing Subsidiary"), a subsidiary of Itron, Inc., a Washington corporation (the "Company"), the Company, and Deutsche Bank Trust Company Americas, as trustee under the Indenture referred to below (the "Trustee").

WITNESSETH

WHEREAS, the Company has heretofore executed and delivered to the Trustee an indenture (the "Indenture"), dated as of August 4, 2006, providing for the issuance by the Company of 2.50 % Convertible Senior Subordinated Notes due 2026 (the "Securities");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which any Subsidiary formed or acquired after the Issue Date which guarantees any senior subordinated Indebtedness of the Company (including the Company's 7.75% Senior Subordinated Notes due 2012) shall unconditionally guarantee all of the Company's obligations under the Securities and the Indenture on the terms and conditions set forth herein (the "Guarantee"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Securities as follows:

1. *Capitalized Terms.* Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. *Agreement to Guarantee.* The Guaranteeing Subsidiary irrevocably and unconditionally guarantees the Obligations of the Company under the Securities and the Indenture, (a) the principal of, premium, if any, and interest on the Securities will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal and interest on any overdue interest on the Securities and all other obligations of the Company to the Holders or the Trustee hereunder or under the Securities will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

The obligations of Guaranteeing Subsidiary to the Holders and to the Trustee pursuant to this Guarantee and the Indenture are expressly set forth in Article XII of the Indenture and reference is hereby made to such Indenture for the precise terms of this Guarantee.

The obligations of Guaranteeing Subsidiary to the Holders and to the Trustee pursuant to this Guarantee and the Indenture are expressly subordinated, as set forth in Sections 12.09 to 12.21 of the Indenture and reference is hereby made to such Sections for the precise terms of such subordination.

No past, present or future director, officer, employee, shareholder of the Guaranteeing Subsidiary (or any such successor entity), as such, shall have any liability for any obligations of the Guaranteeing Subsidiary under this Guarantee or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting a Guarantee, each Holder waives and releases all such liability. This waiver and release is part of the consideration for the issue of the Guarantee.

This is a continuing Guarantee and shall remain in full force and effect and shall be binding upon the Guaranteeing Subsidiary and its successors and assigns until full and final payment of all of the Company's Obligations under the Securities and Indenture or until released in accordance with the Indenture and shall inure to the benefit of the successors and assigns of the Trustee and the Holders, and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges herein conferred upon that party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Guarantee of payment and performance and not of collectibility.

The obligations of the Guaranteeing Subsidiary under its Guarantee shall be limited to the extent necessary to insure that it does not constitute a fraudulent conveyance under applicable law or an improper corporate distribution under applicable state law.

THE TERMS OF ARTICLES XI AND XII OF THE INDENTURE ARE INCORPORATED HEREIN BY REFERENCE.

3. *NEW YORK LAW TO GOVERN.* THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(b).

4. *Counterparts.* The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

5. *Effect of Headings.* The Section headings herein are for convenience only and shall not affect the construction hereof.

6. *Not Responsible for Recitals.* The recitals contained herein shall be taken as the statements of the Issuers and the Guaranteeing Subsidiary, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

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

ITRON, INC.

By: _____
Name:
Title:

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Trustee

By: Deutsche Bank National Trust Company

By: _____
Name:
Title:

By: _____
Name:
Title:

FORM OF GUARANTEE

GUARANTEE

For good and valuable consideration received from the Company (as defined below) by the undersigned (hereinafter referred to as the "Guarantors," which term includes any successors or assigns under the Indenture, dated August 4, 2006, between the Company (as defined below) and Deutsche Bank Trust Company Americas, as trustee, (the "Indenture")), the undersigned have irrevocably and unconditionally guaranteed the Obligations of Itron, Inc., a Washington corporation (the "Company"), under the 2.50% Convertible Senior Subordinated Notes due 2026 (the "Securities") and the Indenture, (a) the principal of, premium, if any, and interest on the Securities will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal and interest on any overdue interest on the Securities and all other obligations of the Company to the Holders or the Trustee hereunder or under the Securities will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

The obligations of each Guarantor to the Holders and to the Trustee pursuant to this Guarantee and the Indenture are expressly set forth in Article XII of the Indenture and reference is hereby made to such Indenture for the precise terms of this Guarantee.

The obligations of each Guarantor to the Holders and to the Trustee pursuant to this Guarantee and the Indenture are expressly subordinated, to the extent applicable, to Indebtedness outstanding under the Credit Agreement, as set forth in Sections 12.09 to 12.21 of the Indenture and reference is hereby made to such Section for the precise terms of such subordination.

No past, present or future director, officer, employee, shareholder of the Guaranteeing Subsidiary (or any such successor entity), as such, shall have any liability for any obligations of the Guaranteeing Subsidiary under this Guarantee or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting a Guarantee, each Holder waives and releases all such liability. This waiver and release is part of the consideration for the issue of the Guarantee.

This is a continuing Guarantee and shall remain in full force and effect and shall be binding upon each Guarantor and its successors and assigns until full and final payment of all of the Company's obligations under the Securities and Indenture or until released or legally defeased in accordance with the Indenture and shall inure to the benefit of the successors and assigns of the Trustee and the Holders, and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges herein conferred upon that party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Guarantee of payment and performance and not of collectibility.

This Guarantee shall not be valid or obligatory for any purpose until the certificate of authentication on the Security upon which this Guarantee is noted shall have been executed by the Trustee under the Indenture by the manual signature of one of its authorized officers.

The obligations of each Guarantor under this Guarantee shall be limited to the extent necessary to insure that it does not constitute a fraudulent conveyance under applicable law or an improper corporate distribution under applicable state law.

THE TERMS OF ARTICLES XI AND XII OF THE INDENTURE ARE INCORPORATED HEREIN BY REFERENCE.

THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS GUARANTEE, INCLUDING WITHOUT LIMITATION, SECTIONS

The parties may sign any number of copies of this Guarantee. Each signed copy shall be an original, but all of them together represent the same agreement.

Capitalized terms used herein have the same meanings given in the Indenture unless otherwise indicated.

[signature page follows]

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

Dated:

[NAME OF GUARANTOR]

By: _____
Name:
Title:

**TERMS OF THE AMENDED AND RESTATED EQUITY GRANT
PROGRAM FOR NONEMPLOYEE DIRECTORS UNDER THE ITRON, INC.
AMENDED AND RESTATED 2000 STOCK INCENTIVE PLAN**

(As amended and restated August 1, 2005 – effective January 1, 2006)

The following provisions set forth the terms of the amended and restated equity grant program (the “Program”) for nonemployee directors of Itron, Inc. (the “Company”) under the Itron, Inc. Amended and Restated 2000 Stock Incentive Plan (the “Plan”). The following terms are intended to supplement, not alter or change, the provisions of the Plan, and in the event of any inconsistency between the terms contained herein and in the Plan, the Plan shall govern. All capitalized terms that are not defined herein shall be as defined in the Plan.

1. Eligibility

Each elected or appointed director of the Company who is not otherwise an employee of the Company or a Related Corporation (an “Eligible Director”) shall be eligible to receive Awards under the Plan, as described below.

2. Initial Grants

(a) A Nonqualified Stock Option to purchase 5,000 shares of the Company’s Common Stock shall be granted to each Eligible Director upon such Eligible Director’s initial election or appointment to the Board (each, an “Initial Grant”).

(b) Initial Grants shall vest and become exercisable in equal annual installments over three years from the Grant Date, assuming continued service on the Board during such period.

3. Retainer Grants

Each Eligible Director shall automatically receive, on the first regular trading day of January and July of each year, a Stock Award for that number of shares of the Company’s Common Stock having a value equal to \$15,000, based on the Fair Market Value of such shares on the applicable Grant Date, with any fractional shares rounded down to the nearest whole share. Such Stock Awards shall not be subject to forfeiture or vesting restrictions.

4. Chairman of the Board and Committee Chair Grants

In addition to the foregoing Option and Stock Award grants, immediately following each year's Annual Meeting of Shareholders, the Chairman of the Board, provided such Chairman is an "Independent Director" as defined in the Company's Corporate Governance Guiding Principles then in effect, including any successor document or amendments thereto, and the chair of each committee of the Board shall each receive an additional Stock Award for that number of shares of the Company's Common Stock having a value equal to \$5,000, based on the Fair Market Value of such shares on the Grant Date, with any fractional shares rounded down to the nearest whole share. Such Stock Awards shall not be subject to forfeiture or vesting restrictions.

5. Option Exercise Price

The exercise price of an Option shall be the Fair Market Value of the Common Stock on the Grant Date.

6. Manner of Option Exercise

An Option shall be exercised by giving the required notice to the Company, stating the number of shares of Common Stock with respect to which the Option is being exercised; provided, however, that no fewer than 100 shares (or the remaining shares then purchasable under the Option, if less than 100 shares) may be purchased upon any exercise of an Option hereunder and that only whole shares will be issued pursuant to the exercise of any Option. The notice shall be accompanied by payment in full for such Common Stock, which payment may be in whole or in part (a) in cash or check, (b) in shares of Common Stock owned by the Eligible Director for at least six months having a fair market value on the day prior to the exercise date equal to the aggregate option exercise price, or (c) by delivery of a properly executed exercise notice, together with irrevocable instructions to a broker, to promptly deliver to the Company the amount of sale or loan proceeds to pay the exercise price, all in accordance with the regulations of the Federal Reserve Board.

7. Term of Options

Each Option shall expire ten years from the Grant Date thereof, but shall be subject to earlier termination as follows:

(a) In the event that an Eligible Director ceases to be a director of the Company for any reason other than the death of the Eligible Director, the unvested portion of any Option granted to such Eligible Director shall terminate automatically

and the vested portion of the Option may be exercised by the Eligible Director only within one year after the date he or she ceases to be a director of the Company or prior to the date on which the Option expires by its terms, whichever is earlier.

(b) In the event of the death of an Eligible Director, whether during the optionee's service as a director or during the one-year period referred to in Section 7(a), the unvested portion of the Option granted to such Eligible Director shall terminate automatically and the vested portion of the Option may be exercised only within one year after the date of death of the Eligible Director or prior to the date on which the Option expires by its terms, whichever is earlier, by the personal representative of the Eligible Director's estate, the person(s) to whom the Eligible Director's rights under the Option have passed by will or the applicable laws of descent and distribution, or the beneficiary designated pursuant to the Plan.

8. Amendment

The Board may amend the provisions contained herein in such respects as it deems advisable. Any such amendment shall not, without the consent of the Eligible Director, impair or diminish any rights of an Eligible Director or any rights of the Company under an Option.

Provisions of the Plan (including any amendments) that were not discussed above, to the extent applicable to Eligible Directors, shall continue to govern the terms and conditions of Awards granted to Eligible Directors pursuant to this Program.

STATEMENT RE COMPUTATION OF RATIOS

	Nine Months Ended September 30, 2006	Year Ended December 31,				
		2005	2004	2003	2002	2001
(in thousands, except ratios)						
Earnings:						
Pre-tax income (loss)	\$ 43,478	\$ 27,528	\$ (9,406)	\$ 17,899	\$ 18,859	\$ 21,366
Less: equity in affiliates	33	82	-	79	126	(616)
	<u>43,445</u>	<u>27,446</u>	<u>(9,406)</u>	<u>17,820</u>	<u>18,733</u>	<u>21,982</u>
Fixed charges ⁽¹⁾ :						
Interest expense, gross ⁽²⁾	12,359	18,944	13,145	2,638	2,061	5,112
Interest portion of rent expense	<u>1,716</u>	<u>2,512</u>	<u>2,696</u>	<u>2,661</u>	<u>1,902</u>	<u>1,062</u>
a) Fixed charges	14,075	21,456	15,841	5,299	3,963	6,174
b) Earnings for ratio ⁽³⁾	\$ 57,520	\$ 48,902	\$ 6,435	\$ 23,119	\$ 22,696	\$ 28,156
Ratios:						
Earnings to fixed charges ^(b/a)	4.1	2.3	- ⁽⁴⁾	4.4	5.7	4.6
Deficit of earnings to fixed charges	-	-	\$ (9,406)	-	-	-

⁽¹⁾ Fixed charges consist of interest on indebtedness and amortization of prepaid debt fees plus that portion of lease rental expense representative of the interest factor.

⁽²⁾ Interest expense, gross, includes amortization of prepaid debt fees and discount.

⁽³⁾ Earnings consist of income from continuing operations before income taxes plus fixed charges.

⁽⁴⁾ Due to Itron's loss in 2004, the ratio coverage was less than 1:1. Additional earnings of \$9,406 would have been needed to achieve a coverage of 1:1.

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 302 OF THE
SARBANES-OXLEY ACT OF 2002**

I, LeRoy D. Nosbaum, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Itron, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

ITRON, INC.

By: _____ /s/ LEROY D. NOSBAUM

LeRoy D. Nosbaum
Chairman of the Board and Chief Executive Officer

Date: November 6, 2006

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906 OF THE
SARBANES-OXLEY ACT OF 2002**

The certification set forth below is being submitted in connection with the Quarterly Report of Itron, Inc. (the Company) on Form 10-Q for the quarterly period ended September 30, 2006 (the Report) for the purpose of complying with Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 and Section 1350 of Chapter 63 of Title 18 of the United States Code.

LeRoy D. Nosbaum, the Chief Executive Officer and Steven M. Helmbrecht, the Chief Financial Officer of the Company, each certifies that to the best of his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ LEROY D. NOSBAUM

LeRoy D. Nosbaum
Chairman of the Board and Chief Executive Officer
November 6, 2006

/s/ STEVEN M. HELMBRECHT

Steven M. Helmbrecht
Sr. Vice President and Chief Financial Officer
November 6, 2006