UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington DC 20549

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FORM 10-K

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[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF
THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended June 30, 2001
Commission file number 0-26038

ResMed Inc
(Exact name of Registrant as specified in its Charter)

Delaware
(State or other jurisdiction of incorporation or organization)

98-0152841
(IRS Employer Identification No.)

14040 Danielson Street
Poway CA 92064-6857
United States Of America
(Address of principal executive offices)

(858) 746-2400
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

<TABLE>
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| Title of each class: | Name of Each exchange upon which registered: |
|---|---|
| <S> | <C> |
| Common Stock, $.004 Par Value | New York Stock Exchange |
| Rights to Purchase Series A Junior Participating Preferred Stock | New York Stock Exchange |

</TABLE>

Securities registered pursuant to Section 12(g) of the Act:

None

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 filing requirements for the past 90 days.

Yes [X] No [_]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulations S-K (S 229.405 of this Chapter) is not contained herein and will not be contained to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of the Form 10-K or any amendment to this Form 10-K [_].

The aggregate market value of the voting stock held by non-affiliates of registrant as of September 7, 2001, computed by reference to the closing sale price of such stock on the New York Stock Exchange, was approximately $1,105,000,000. (All directors, executive officers, and 10% stockholders of Registrant are considered affiliates.)

At September 7, 2001, registrant had 31,870,060 shares of Common Stock, $.004 par value, issued and outstanding.

Portions of registrant's definitive Proxy Statement for its November 5, 2001 meeting of stockholders are incorporated by reference into Part III of this report.

RESMED INC

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Sullivan, VPAP, AutoSet, Bubble Mask, Bubble Cushion, SmartStart, ResCap, Mirage, HumidAire, Aero-Click, minni Max nCPAP, Moritz II biLEVEL, Aero-Fix, Twister remove, SELFSET, MESAMIV; Poly-MESAM, MEPAL, Auto VPAP, AutoScan, AutoSet CS, AutoSet T, AutoView, IPAP MAX, ResControl, SCAN, S6, Ultra Mirage, VPAP MAX, AutoSet.com, AutoSet-CS.com, and ResMed are our trademarks.

As used in this 10-K, the terms "we," "us," and "our" refer to ResMed Inc., a Delaware corporation, and its subsidiaries, unless otherwise stated.

## PART I

### Item 1 Business

#### General

We are a leading developer, manufacturer and distributor of medical equipment for treating, diagnosing, and managing sleep disordered breathing, or SDB. SDB includes obstructive sleep apnea, or OSA, and related respiratory disorders that occur during sleep. When we were formed in 1989, our primary purpose was to commercialize a treatment for OSA developed by Professor Colin Sullivan of the University of Sydney, the current Chairman of our Medical Advisory Board. This treatment, nasal Continuous Positive Airway Pressure, or CPAP, was the first successful noninvasive treatment for OSA. CPAP systems deliver pressurized air, typically through a nasal mask, to prevent collapse of the upper airway during sleep.

Since the development of nasal CPAP, we have developed a number of innovative products for SDB, including flow generators, diagnostic products, mask systems, headgear and other accessories. Our growth has been fueled by a productive research and product development effort, geographic expansion, and increased awareness of SDB as a significant health concern among physicians and patients. In February 2001, we acquired MAP Medizin-Technologie GmbH, or MAP. MAP is a leading German designer, manufacturer and distributor of medical devices for the diagnosis and treatment of SDB, with a particular focus on OSA. This acquisition enhances our position in Europe, particularly in Germany, the second largest market worldwide for OSA products.

We employ over 950 people and sell our products in over 60 countries through a combination of wholly owned subsidiaries and independent distributors.

#### Corporate History

ResMed Inc, a Delaware corporation, was formed in March 1994 as the ultimate holding company for our Australian, European and United States operating subsidiaries. On June 1, 1995, we completed an initial public offering of common stock and on June 2, 1995 our common stock commenced trading on The NASDAQ National Market. On September 30, 1999 we transferred our principal public listing to the New York Stock Exchange, trading under the ticker symbol RMD. On November 25, 1999, we established a secondary listing of our shares as Chess Depositary Instruments, or CDIs, on the Australian Stock Exchange, also under the symbol RMD. Ten CDIs on the ASX represent one share of our common stock on the NYSE.

Our Australian subsidiary, ResMed Holdings Limited, was originally organized in 1989 by Dr. Peter Farrell to acquire from Baxter Center for Medical Research Pty Limited, or Baxter, the rights to certain technology relating to CPAP treatment as well as Baxter's existing CPAP device business. Baxter had sold CPAP devices in Australia since 1988, having acquired the rights to the technology in 1987 from Dr. Colin Sullivan.

In addition to acquiring MAP in February 2001, we also acquired the distribution businesses of Dieter W. Priess Medtechnik, Premium Medical SARL, Innovmedics Pte Ltd and EINAR Egnell AB, our German, French, Singaporean and Swedish distributors, on February 7, 1996, June 12, 1996, November 1, 1997 and January 31, 2000, respectively. During the 1999 fiscal year we made an equity investment in Flaga hf, based in Iceland. We now market Flaga's polysomnographic products under the Embla and Embletta label in the United States and selected other markets.



## The Market

Sleep is a complex neurological process that includes two distinct states: rapid eye movement, or REM, sleep and non-rapid eye movement, or non-REM, sleep. REM sleep, which is about 20-25% of total sleep experienced by adults, is characterized by a high level of brain activity, bursts of rapid eye movement, increased heart and respiration rates, and paralysis of many muscles. Non-REM sleep is subdivided into four stages that generally parallel sleep depth; stage 1 is the lightest and stage 4 is the deepest.

The upper airway has no rigid support and is held open by active contraction of upper airway muscles. Normally, during REM sleep and deeper levels of non-REM sleep, upper airway muscles relax and the airway narrows. Individuals with narrow upper airways or poor muscle tone are prone to temporary collapses of the upper airway during sleep, or apneas, or near closures of the upper airways, or hypopneas. These breathing irregularities result in a lowering of blood oxygen concentration, causing the central nervous system to react to the lack of oxygen or increased carbon dioxide and signaling the body to respond. Typically, the individual subconsciously arouses from sleep, causing the throat muscles to contract, opening the airway. After a few gasping breaths, blood oxygen levels increase and the individual can resume a deeper sleep until the cycle repeats itself. Sufferers of OSA typically experience ten or more such cycles per hour. While these awakenings greatly impair the quality of sleep, the individual is not normally aware of these disruptions.

In its "Wake Up America" report to Congress in 1993, the National Commission on Sleep Disorders Research estimated that approximately 40 million individuals in the United States suffer from chronic disorders of sleep and wakefulness, such as sleep apnea, insomnia and narcolepsy. According to this report, sleep apnea is the most common sleep disorder, affecting approximately 20 million individuals in the United States. Despite the high prevalence of OSA, there is a general lack of awareness of OSA among both the medical community and the general public. It is estimated that less than 10% of those afflicted by OSA know the cause of their fatigue or other symptoms. Health care professionals are often unable to diagnose OSA because they are unaware that such non-specific symptoms as fatigue, snoring and irritability are characteristic of OSA.

While OSA has been diagnosed in a broad cross-section of the population, it is predominant among middle-aged men and those who are obese, smoke, consume alcohol in excess or use muscle-relaxing drugs. In addition, patients who are being treated for certain other conditions, including those undergoing dialysis treatment or suffering from diabetes, may be medically predisposed to OSA. Recent studies have also shown that SDB is associated with hypertension, the leading risk factor for the development of stroke and heart disease, and that over 50% of post stroke patients and patients with congestive heart failure have SDB.

## Sleep Disordered Breathing and Obstructive Sleep Apnea

Sleep disordered breathing, or SDB, encompasses all physiological

processes that cause detrimental breathing patterns during sleep. Manifestations include OSA, central sleep apnea, or CSA, and hypoventilation syndromes that occur during sleep. Hypoventilation syndromes are generally associated with obesity, chronic obstructive lung disease, neuromuscular disease and upper airway resistance changes. OSA is the most common form of SDB.

Sleep fragmentation and the loss of the deeper levels of sleep caused by OSA can lead to excessive daytime sleepiness, reduced cognitive function, including memory loss and lack of concentration, depression and irritability. OSA sufferers also may experience an increase in heart rate and an elevation of blood pressure during the cycle of apneas. Several studies indicate that the oxygen



desaturation, increased heart rate and elevated blood pressure caused by OSA may be associated with increased risk of cardiovascular morbidity and mortality due to angina, stroke and heart attack. Patients with OSA have been shown to have impaired daytime performance in a variety of cognitive functions including problem solving, response speed and visual motor coordination, and studies have linked OSA to increased occurrences of traffic and workplace accidents.

Generally, an individual seeking treatment for the symptoms of OSA is referred by a general practitioner to a specialist for further evaluation. The diagnosis of OSA typically requires monitoring the patient during sleep at either a sleep clinic or the patient's home. During overnight testing, respiratory parameters and sleep patterns are monitored along with other vital signs such as blood pressure, heart rate and blood oxygen levels. These tests allow sleep clinicians to detect any sleep disturbances such as apneas, hypopneas or subconscious awakenings. We estimate that there are currently more than 2,000 sleep clinics in the United States, a substantial portion of which are affiliated with hospitals. The number of sleep clinics has expanded significantly from approximately 100 such facilities in 1985.

Existing Therapies

Prior to 1981, the primary treatment for OSA was a tracheotomy, a surgical procedure to cut a hole in the patient's windpipe to create a channel for airflow. Most recently, surgery has involved either uvulopalatopharyngoplasty ('UPPP'), in which surgery is performed on the upper airway to remove excess tissue and to streamline the shape of the airway, or mandibular advancement, in which the lower jaw is moved forward to widen the patient's airway. UPPP alone has a poor success rate; however, when performed in conjunction with mandibular advancement, a greater success rate has been claimed. This combined procedure, performed by highly specialized surgeons, is expensive and involves prolonged and often painful recovery periods.

Nasal CPAP, by contrast, is a non-invasive means of treating OSA. Nasal CPAP was first used as a treatment for OSA in 1980 by Dr. Colin Sullivan, the Chairman of our Medical Advisory Board. CPAP systems were commercialized for treatment of OSA in the United States in the mid 1980's. Today, use of nasal positive airway pressure is generally acknowledged as the most effective and least invasive therapy for managing OSA.

During nasal CPAP treatment, a patient sleeps with a nasal mask connected to a small portable air flow generator that delivers room air at a positive pressure. The patient breathes in air from the flow generator and breathes out through an exhaust port in the mask. Continuous air pressure applied in this manner acts as a pneumatic splint to keep the upper airway open and unobstructed.

CPAP is not a cure but a therapy for managing OSA, and therefore, must be used on a daily basis as long as treatment is required. Patient compliance has been a major factor in the efficacy of CPAP treatment. Early generations of CPAP units provided limited patient comfort and convenience. Patients experienced soreness from the repeated use of nasal masks and had difficulty falling asleep with the CPAP device operating at the prescribed pressure. In more recent years, product innovations to improve patient comfort and compliance have been developed. These include more comfortable mask systems, delay timers which gradually raise air pressure allowing the patient to fall asleep more easily; bilevel flow generators, including VPAP systems, which provide different air pressures for inhalation and exhalation; heated humidification systems to make the airflow more comfortable; and autotitration devices which reduce the average pressure delivered during the night.

Business Strategy

We believe that the SDB market will continue to grow in the future due to a number of factors including increasing awareness of OSA, improved

understanding of the role of SDB treatment in the



management of cardiac, neurologic and related disorders, and an increase in home-based diagnosis. Our strategy for expanding our business operations and capitalizing on the growth of the SDB market consists of the following key elements:

. Continue Product Development and Innovation. We are committed to ongoing innovation in developing products for the diagnosis and treatment of SDB. We have been a leading innovator of products designed to more effectively treat apneas, increase patient comfort and encourage compliance with prescribed therapy. For example, in 1997 we introduced the Mirage Mask. This mask contains an inflatable air pocket, which conforms to the patient's facial contours, creating a more comfortable and better seal. Additionally, in 1999 we introduced the AutoSet T flow generator, an autotitrating device that adapts to the patient's breathing patterns to more effectively prevent apneas. We believe that continued product development and innovation are key factors to our ongoing success. Approximately 14% of our employees are devoted to research and development activities. In fiscal year 2001, we invested $11.1 million, or 7.2% of our revenues, in research and development.

. Expand Geographic Presence. We market our products in over 60 countries to sleep clinics, home health care dealers and third party payers. We intend to increase our sales and marketing efforts in our principal markets, as well as expand our presence into new geographic regions. For example, our acquisition of MAP enhances our position in Europe, particularly in Germany, the second largest market worldwide for OSA products.

. Increase Public and Clinical Awareness. We intend to continue to expand our existing promotional activities to increase awareness of SDB and our treatment alternatives. These promotional activities target the population with predisposition to SDB as well as primary care physicians and specialists, such as cardiologists, neurologists and pulmonologists. In addition, we also target special interest groups, including the National Stroke Association, the American Heart Association and the National Sleep Foundation.

. Expand into New Clinical Applications. We continually seek to identify new applications of our technology for significant unmet medical needs. SDB is associated with a number of symptoms beyond fatigue and irritability. In particular, recent studies have established a clinical association between OSA and stroke and congestive heart failure. We are currently developing a device, which has not been approved for sale in the United States, for the treatment of Cheyne-Stokes breathing in patients with congestive heart failure. In addition, we maintain close working relationships with a number of prominent physicians to explore new medical applications for our products and technology.

. Leverage the Experience of our Management Team and Medical Advisory Board. Our senior management team has extensive experience in the medical device industry in general, and in the field of SDB in particular. Our Medical Advisory Board is comprised of experts in the field of SDB, including Dr. Colin Sullivan, the inventor of nasal CPAP. We intend to continue to leverage the experience and expertise of these individuals to maintain our innovative approach to the development of products and increase awareness of the serious medical problems caused by SDB.

Products

Our portfolio of products for the treatment of OSA and other forms of SDB include flow generators, diagnostic products, mask systems, headgear and other accessories.



Flow Generators

We produce nasal CPAP, VPAP and AutoSet systems for the diagnosis, titration and treatment of SDB. The flow generator systems deliver positive airway pressure through a small nasal mask (or sometimes a full-face mask). Our VPAP units deliver ultra-quiet, comfortable bilevel therapy. There are two preset pressures: a higher pressure as the patient breathes in, and a lower pressure as the patient breathes out. Breathing out against a lower pressure makes treatment more comfortable, particularly for patients who need high pressure levels or for those with impaired breathing ability. AutoSet systems are based on a proprietary technology to monitor breathing that can also be used in the diagnosis and treatment of OSA. CPAP and VPAP flow generators, together with our diagnostic products, accounted for approximately 57%, 60% and 64% of our net revenues in fiscal years 2001, 2000 and 1999, respectively.

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| Flow Generators | Description | Date of Commercial Introduction |
|---|---|---|
| VPAP II | Bilevel portable device providing different pressure levels for inhalation and exhalation, improved pressure switching and reduced noise output and spontaneous breath triggering. | March 1996 |
| COMFORT | Bilevel device with limited features. | March 1996 |
| VPAP II ST | Bilevel portable device with spontaneous and spontaneous/timed breath triggering modes of operation. | April 1996 |
| VPAP II ST A | Bilevel device with power failure alarms. | August 1998 |
| VPAP MAX | Bilevel ventilatory support system for the treatment of adult patients with respiratory insufficiency or respiratory failure. | November 1998 |
| AutoSet T | Autotitrating device which continually adjusts CPAP treatment pressure based on patient airway resistance. | March 1999 |
| ResMed S6 series | Quiet, compact CPAP device with various comfort features. | June 2000 |
| Minni Max nCPAP | CPAP device with integrated humidification capabilities and low noise levels. | February 2001* |
| Moritz II Bilevel | Bilevel portable device. | February 2001* |

</TABLE>

*Date of acquisition of MAP. The MAP products are not approved for marketing in the United States.



Mask Systems

Mask systems are one of the most important elements of an OSA treatment system. Masks are a primary determinant of patient comfort and as such may drive or impede patient compliance with therapy. We have been a consistent innovator in masks, improving patient comfort while minimizing size and weight.

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| Mask Products | Description | Date of Commercial Introduction |
|---|---|---|
| Mirage Mask | Proprietary mask design with a contoured nasal cushion that adjusts to patient's facial contours. Quiet, light and low profile. | August 1997 |
| Mirage Full Face Mask | Mirage-based full face mask system. Provides an effective method of applying ventilatory assist Noninvasive Positive Pressure Ventilation therapy. Can be used to address mouth-breathing problems in conventional bilevel or CPAP therapy. | June 1999 |
| Ultra Mirage Mask | Advanced version of the Mirage system with reduced noise characteristics and improved forehead bridge. | June 2000 |

</TABLE>

Diagnostic Products

We market sleep recorders for the diagnosis, titration and treatment of SDB in sleep clinics and hospitals. These diagnostic systems record relevant respiratory and sleep data, which can be analyzed by a sleep specialist or physician who can then tailor an appropriate OSA treatment regimen for the patient.

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| Diagnostic Products | Description | Date of Commercial Introduction |
|---|---|---|
| <S> | <C> | <C> |
| AutoSet Portable II Plus | Portable version of the AutoSet Clinical with PC processor functions. | June 1997 |
| ResControl | Device to permit remote monitoring and adjustment of ResMed CPAP, VPAP, and AutoSet T Flow generators. An internal pressure transducer enables the clinician to interface with polysomnography to monitor airflow in both titration and diagnostic studies. | September 1999 |
| Embla | Digital sleep recorder that provides comprehensive sleep diagnosis in a sleep laboratory. | October 1999 |
| Embletta | Pocket-size digital recorder that performs ambulatory sleep studies. | November 2000 |
| MESAM IV Portable Diagnostic System | Portable diagnostic system that measures snore, heart rate, body position, and oxygen saturation in conjunction with computer assisted analysis. | February 2001* |
| Poly-MESAM Portable Diagnostic System | Configurable polysomnography system adaptable to individual sleep laboratory needs. | February 2001* |
| MEPAL Diagnostic System | Polysomnography system designed for use in the sleep laboratory. | February 2001* |
| MEPAL mobil Diagnostic System | Ambulatory polysomnography system. | February 2001* |

</TABLE>

*Date of acquisition of MAP. The MAP products are not approved for marketing in the United States.



Accessories and Other Products

To enhance patient comfort, convenience and compliance, we market a variety of other products and accessories. These products include humidifiers, such as the SULLIVAN HumidAire, which connect directly with the CPAP, VPAP and AutoSet flow generators to humidify and heat the air delivered to the patient. Their use prevents the drying of nasal passages which can cause discomfort. Other optional accessories include a cold passover humidifier, carry bags and breathing circuits. MAP also offers a range of accessories, including the Twister remote, an intelligent remote control for use in the sleep lab environment to set and monitor flow generators, the Aero-Click connection system, which allows a quick, simple connect/disconnect between the mask and CPAP air delivery source and the AeroFix headgear, for the comfortable adjustment of masks for CPAP therapy.

Product Development and Clinical Trials

We have a strong track record in innovation in the sleep market. In 1989, we introduced our first nasal CPAP device. Since then we have been committed to an ongoing program of product advancement and development. Currently, our product development efforts are focused on not only improving our current product offerings, but also expanding into new product applications. For example, in 1997, we introduced the Mirage Mask. This mask was based on the innovative Bubble Mask technology introduced in 1991, which used the principle of air inflation of the mask cushion to create a more comfortable and better seal by better conforming to patient facial contours. Additionally, in 1999, we introduced the AutoSet T Flow generator, an autotitrating device that adapts to the patient's breathing patterns to effectively prevent apneas.

We continually seek to identify new applications of our technology for significant unmet medical needs. SDB is associated with a number of symptoms beyond fatigue and irritability. In particular, recent studies have established a clinical association between SDB and stroke and congestive heart failure. For example, we are currently developing a device, which has not been approved for sale in the United States, for the treatment of Cheyne-Stokes breathing in patients with congestive heart

failure. We also support clinical trials in the United States, Germany, France, the United Kingdom and Australia.

We consult with physicians at major sleep centers throughout the world to identify technological trends in the treatment of SDB. Some of these physicians currently serve on our Medical Advisory Board. New product ideas are also identified by our marketing staff, direct sales force, network of distributors, manufacturers' representatives, customers, and patients. Typically, our internal development staff then performs new product development.

In fiscal years 2001, 2000 and 1999, we invested $11,146,000, $8,499,000 and $6,542,000, respectively, on research and development.

Sales and Marketing

Our products are typically purchased by a home healthcare dealer who then sells the products to the patient. The decision to purchase our products, as opposed those of our competitors, is made or influenced by one or more of the following individuals or organizations: the prescribing physician and his or her staff, the home healthcare dealer, the insurer and the patient.

We currently market our products in over 60 countries using a network of distributors, independent manufacturers' representatives and our direct sales force. We attempt to tailor our marketing



approach to each national market, based on regional awareness of SDB as a health problem, physician referral patterns, consumer preferences and local reimbursement policies.

North America and Latin America

In the United States, our sales and marketing activities are conducted through a field sales organization made up of regional territory representatives, program development specialists and diagnostic system specialists, regional sales directors, and independent manufacturers' representatives. Our United States field sales organization markets and sells products to more than 4,000 home health care dealer branch locations throughout the United States. Our direct sales force receives a base salary, plus commissions, while our independent sales representatives receive higher commissions, but no base salary.

We also promote and market our products directly to sleep clinics. Patients who are diagnosed with OSA and prescribed CPAP treatment are typically referred by the diagnosing sleep clinic to a home health care dealer to fill the prescription. The home health care dealer, in consultation with the referring physician, will assist the patient in selecting the equipment, fit the patient with the appropriate mask and set the flow generator pressure to the prescribed level. In the United States, our sales employees and manufacturers' representatives are managed by two regional Sales Managers, a Director of Sales and ultimately our Senior Vice President, U.S. Sales and Marketing.

Our Canadian and Latin American sales are conducted through independent distributors. Sales in North America and Latin America accounted for 52%, 54% and 57% of our net revenues for fiscal years 2001, 2000 and 1999, respectively.

Europe

We market our products in most major European countries. We have wholly owned subsidiaries in the United Kingdom, Germany, France and Sweden, and we use independent distributors to sell our products in other areas of Europe. Distributors are selected in each country based on their knowledge of respiratory medicine and a commitment to SDB therapy. In each country in which we have a subsidiary, a local senior manager is responsible for direct national sales. MAP conducts its sales efforts through a direct sales force.

Our Executive Vice President is responsible for coordination of all European activities and, in conjunction with local management, the direct sales activity in Europe. Sales in Europe accounted for 39%, 35% and 34% of our total net revenues for fiscal years 2001, 2000 and 1999, respectively. As a result of the MAP acquisition, we expect European sales to increase as a percentage of total net revenues in the near future.

Australia/Rest of World

Marketing in Australia and the rest of the world is the responsibility of our Executive Vice President. Sales in Australia and the rest of the world accounted for 9%, 11% and 9% of our total net revenues for the fiscal

years ended June 30, 2001, 2000 and 1999, respectively.

Other Marketing Efforts

In addition to our sales efforts, we work with the following organizations to promote public and clinical awareness of SDB and OSA:

. National Stroke Association: We have developed a strategic alliance with the National Stroke Association to increase awareness about the high prevalence of SDB in the stroke survivor population.



. American Heart Association: We are working closely with the Western Affiliates of the American Heart Association on a number of local programs to increase awareness and education about SDB. We are also in discussions with the national American Heart/American Stroke associations regarding national programs initially targeting clinicians on the impact of SDB on both heart disease and stroke patients, as well as its role in the development of hypertension, a major risk factor for both heart disease and stroke.

. National Sleep Foundation: The National Sleep Foundation is a non profit organization dedicated to improving public health and safety by raising the level of awareness and education toward sleep related programs and research. We have been an active corporate partner and have supported the National Sleep Foundation for a number of years.

We believe that our affiliations and continued work with these organizations raises the awareness of SDB as a significant health concern.

Manufacturing

Our principal manufacturing facilities are located in Sydney, Australia and comprise a 120,000 square foot manufacturing and research and development facility. Our manufacturing operations consist primarily of assembly and testing of our flow generators, masks and accessories. Of the numerous raw materials, parts and components purchased for assembly of our therapeutic and diagnostic sleep disorder products, most are off-the-shelf items available from multiple vendors. We generally manufacture to our internal sales forecasts and fill orders as received. Our quality control group performs tests at various steps in the manufacturing cycle to ensure compliance with our specifications.

Our quality management system is based upon the requirements of ISO 9001, EN46001 (European Medical Standards), FDA Quality System Regulations for medical devices (21 CFR part 820) and the Medical Device Directive (93/42/EEC). Our Sydney, Australia facility is accredited to ISO 9001 and EN46001 and our San Diego, California facility is accredited to ISO 9002 and EN46002. These two sites have third party audits conducted by the ISO certification bodies at regular intervals.

Our newly acquired German manufacturing operation based in Munich operates in a facility of approximately 24,000 square feet. This facility is accredited to ISO 9001 and EN46001. The products are primarily flow generators that have been developed internally by a small development team. The manufacturing process consists of major sub-assemblies produced externally by sub-contractors, and final assembly and test of the finished product being performed in house. Appropriate quality controls monitor and measure product assembly and performance.

We purchase uniquely configured components for our devices from single-source suppliers. A reduction or stoppage in supply while a replacement supplier reconfigures its components, or while we reconfigure our components for the replacement part, if required, would limit our ability to manufacture our devices, which could result in a significant reduction in sales and profitability.

Third-Party Reimbursement

The cost of medical care in many of the countries in which we operate is funded in substantial part by government and private insurance programs. Although we do not generally receive payments for



our products directly from these payers, our success in major markets is dependent upon the ability of patients to obtain adequate reimbursement for our products.

In the United States, our products are purchased primarily by home health care dealers, hospitals or sleep clinics, which then invoice third-party payers directly. Domestic third-party payers include Medicare, Medicaid, and corporate health insurance plans. These payers may deny reimbursement if they determine that a device is not used in accordance with cost-

effective treatment methods, or is experimental, unnecessary or inappropriate. The long-term trend towards managed health care could control or significantly influence the purchase of health care services and products, as well as legislative proposals to reform health care, may result in lower prices for our products.

In the United States, we sell our products primarily to home health care dealers and to sleep clinics; we do not file claims and bill governmental programs and other third-party payers directly for reimbursement for our products. Nevertheless, we are still subject to laws and regulations relating to governmental programs, and any violation of these laws and regulations could result in civil and criminal penalties, including fines.

In particular, the federal Anti-Kickback Law prohibits persons from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce either the referral of an individual, or the furnishing, recommending or arranging for a good or service, for which payment may be made under a Federal healthcare program such as the Medicare and Medicaid programs. The government has interpreted this law broadly to apply to the marketing and sales activities of manufacturers and distributors like us. Many states have adopted laws similar to the federal Anti-Kickback Law. We are also subject to other federal and state fraud laws applicable to payment from any third-party payer. These laws prohibit persons from knowingly and willfully filing false claims or executing a scheme to defraud any healthcare benefit program, including private third-party payers. These laws may apply to manufacturers and distributors who provide information on coverage, coding and reimbursement of their products to persons who bill third-party payers. We continuously strive to comply with these laws and believe that our arrangements do not violate these laws. Liability may still arise from the intentions or actions of the parties with whom we do business or from a different governmental agency interpretation of the laws.

In some foreign markets, such as Spain, France and Germany, government reimbursement is currently available for purchase or rental of our products subject, however, to constraints such as price controls or unit sales limitations. In Australia and in some other foreign markets, there is currently limited or no reimbursement for devices that treat OSA.

Service and Warranty

We generally offer one-to-two year limited warranties on our flow generator products. Warranties on mask systems are for 90 days. In most markets, we rely on our distributors to repair our products with parts supplied by us. In the United States, home health care dealers generally arrange shipment of products to our San Diego facility for repair.

We receive returns of our products from the field for various reasons. We believe that the level of returns experienced to date is consistent with levels typically experienced by manufacturers of similar devices. We provide for warranties and returns based on historical data.



Competition

The markets for our products are highly competitive. We believe that the principal competitive factors in all of our markets are product features, reliability and price. Reputation and efficient distribution are also important factors.

We compete on a market-by-market basis with various companies, some of which have greater financial, research, manufacturing and marketing resources than ourselves. In the United States, our principal market, Respironics, Inc., DeVilbiss, a division of Sunrise Medical Inc., and Nellcor Puritan Bennett, a subsidiary of Tyco Inc., are the primary competitors for our CPAP products. Our principal European competitors are also Respironics, DeVilbiss, and Nellcor Puritan Bennett, as well as regional European manufacturers. The disparity between our resources and those of our competitors may increase as a result of the recent trend towards consolidation in the health care industry. In addition, our products compete with surgical procedures and dental appliances designed to treat OSA and other SDB related respiratory conditions. The development of new or innovative procedures or devices by others could result in our products becoming obsolete or noncompetitive, resulting in a material adverse effect on our business, financial condition and results of operations.

Any product developed by us that gains regulatory clearance will have to compete for market acceptance and market share. An important factor in such competition may be the timing of market introduction of competitive products. Accordingly, the relative speed with which we can develop products, complete clinical testing and regulatory clearance processes and supply commercial quantities of the product to the market are expected to be important competitive factors. In addition, our ability to compete will

continue to be dependent on the extent to which we are successful in protecting our patents and other intellectual property.

Patents and Proprietary Rights and Related Litigation

Through our subsidiaries ResMed Limited and MAP Medizintechnik fur Arzt und Patient GmbH, we own or have licensed rights to 51 issued United States patents (including 13 design patents) and 102 issued foreign patents. In addition, there are 82 pending United States patent applications (including 4 design patent applications) and 197 pending foreign patent applications. Some of these patents and patent applications relate to significant aspects and features of our products. These include U.S. patents relating to CPAP devices, delay timer system, the Bubble Mask, and an automated means of varying air pressure based upon a patient's changing needs during nightly use, such as that employed in our AutoSet device.

None of our patents is due to expire in the next five years, with the exception of five foreign patents due to expire in 2002 and one foreign patent in each of the years 2004 and 2005. We believe that the expiration of these patents will not have a material adverse impact on our competitive position.

We rely on a combination of patents, trade secrets, trade marks and non-disclosure agreements to protect our proprietary technology and rights. ResMed Limited is pursuing an infringement action against one of its competitors and is investigating possible infringement by others. See Item 3 - "Legal Proceedings".

Additional litigation may be necessary to attempt to enforce patents issued to us, to protect our rights, or to defend third-party claims of infringement by us of the proprietary rights of others. Patent laws regarding the enforceability of patents vary from country to country. Therefore, there



can be no assurance that patent issues will be uniformly resolved, or that local laws will provide us with consistent rights and benefits.

Government Regulations

Our products are subject to extensive regulation particularly as to safety, efficacy and adherence to FDA Quality System Regulation, or QSR, and related manufacturing standards. Medical device products are subject to rigorous FDA and other governmental agency regulations in the United States and regulations of relevant foreign agencies abroad. The FDA regulates the introduction, manufacture, advertising, labeling, packaging, marketing, distribution, and record keeping for such products, in order to ensure that medical products distributed in the United States are safe and effective for their intended use. In addition, the FDA is authorized to establish special controls to provide reasonable assurance of the safety and effectiveness of most devices. Non compliance with applicable requirements can result in import detentions, fines, civil penalties, injunctions, suspensions or losses of regulatory approvals, recall or seizure of products, operating restrictions, refusal of the government to approve product export applications or allow us to enter into supply contracts, and criminal prosecution.

The FDA requires that a manufacturer introducing a new medical device or a new indication for use of an existing medical device obtain either a Section 510(k) premarket notification clearance or a premarket approval, or PMA, prior to it being introduced into the market. Our products currently marketed in the United States are marketed in reliance on 510(k) pre-marketing clearances as either Class I or Class II devices. The process of obtaining a Section 510(k) clearance generally requires the submission of performance data and often clinical data, which in some cases can be extensive, to demonstrate that the device is "substantially equivalent'' to a device that was on the market prior to 1976 or to a device that has been found by the FDA to be "substantially equivalent'' to such a pre-1976 device. As a result, FDA approval requirements may extend the development process for a considerable length of time. In addition, in some cases, the FDA may require additional review by an advisory panel, which can further lengthen the process. The PMA process, which is reserved for new devices that are not substantially equivalent to any predicate device and for high risk devices or those that are used to support or sustain human life, may take several years and requires the submission of extensive performance and clinical information.

As a medical device manufacturer, all of our domestic and Australian manufacturing facilities are subject to inspection on a routine basis by the FDA. We believe that our design, manufacturing and quality control procedures are in substantial compliance with the FDA's regulatory requirements. MAP's facilities are not subject to FDA regulation, because none of MAP's products is currently marketed in the United States.

Sales of medical devices outside the United States are subject to regulatory requirements that vary widely from country to country. Approval for sale of our medical devices in Europe is through the CE mark process. Our products where appropriate, are CE marked to the European Union's Medical Device Directive. Under the CE marketing scheme, our products are classified as either Class I or Class II, our devices are listed in the United States with FDA, in Australia with the Therapeutic Goods Administration, or TGA, and in Canada with Health Canada.

Employees

As of June 30, 2001, we have 953 employees or full time consultants, of which 353 persons were employed in warehousing and manufacturing, 129 in research and development, 276 in sales and



marketing and 195 in administration. Of our employees and consultants, 517 were located in Australia, 151 in the United States, 273 in Europe and 12 in Singapore, New Zealand and Malaysia.

We believe that the success of our business will depend, in part, on our ability to attract and retain qualified personnel. None of our employees is covered by a collective bargaining agreement. We believe that our relationship with our employees is good.

Medical Advisory Board

Our Medical Advisory Board, or MAB, consists of physicians and scientists specializing in the field of sleep disordered breathing. MAB members meet as a group twice a year with members of our senior management and members of our research and marketing departments to advise us on technology trends in SDB and other developments in sleep disorders medicine. MAB members are also available to consult on an as-needed basis with our senior management. In alphabetical order, MAB members include:

Claudio Bassetti, Dr. Claudio Bassetti is a Professor in the Faculty of Medicine, University of Zurich, where he is the Director and Vice-Chairman of the Neurological Clinic. A member of the American Academy of Neurology and the American Sleep Disorders Association, Dr. Bassetti is also a member of the scientific board of the European Sleep Research Society, and an associate editor of 'Sleep Medicine'. He is on the editorial board of 'Swiss Archives of Neurology and Psychiatry and has produced over 100 publications. Dr. Bassetti is a leader in studying the implications of sleep disordered breathing on stroke.

Michael Coppola, MD, is a leading pulmonary critical care and sleep disorders physician in private practice in Massachusetts. He is an attending physician at Baystate Medical Center and Mercy Hospital in Springfield, MA and a Fellow of the American College of Chest Physicians. He is Chairman of the Massachusetts Sleep Breathing Disorders Society. He is also the Medical Director of Winmar Diagnostics, a sleep disordered breathing specialty company, and Associate Clinical Professor of Medicine at Tufts University School of Medicine.

Terence M. Davidson, MD, FACS, is Professor of Surgery in the Division of Otolaryngology - Head and Neck Surgery at the University of California, San Diego, School of Medicine. He is Section Chief of Head and Neck Surgery at the Veterans Administration San Diego Healthcare System and Associate Dean for Continuing Medical Education at UCSD. He is also director of the UCSD Head and Neck Surgery Sleep Clinic in La Jolla, CA.

Neil J. Douglas, MD, FRCP, is Professor of Respiratory and Sleep Medicine, University of Edinburgh, an Honorary Consultant Physician, Royal Infirmary of Edinburgh and Director of the Scottish National Sleep Laboratory. He is Dean of the Royal College of Physicians of Edinburgh and Vice Chairman of the UK Royal Colleges Committee of CME Directors and a member of the Working Party on Sleep Apnea of the Royal College of Physicians of London. He is a past Chairman of the British Sleep Society and past Secretary of the British Thoracic Society. He has published over 200 papers on breathing during sleep.

Nicholas Hill, MD, is Professor of Medicine at Brown University and Director of Critical Care Services at Rhode Island Hospital and Pulmonary Medicine at the Miriam Hospital, both in Providence. He is a Fellow of the American College of Chest Physicians and a member of the Planning Committee for the American Thoracic Society.



Barry J. Make, MD, is Director, Emphysema Center and Pulmonary Rehabilitation National Jewish Medical and Research Center, and Professor of Pulmonary Sciences and Critical Care Medicine of the University of Colorado School of Medicine. He has served on numerous national and

international committees for respiratory and cardiovascular diseases. His research and clinical work has resulted in a large number of publications on mechanisms, treatment and rehabilitation of chronic respiratory disease.

Colin Sullivan, MD, PhD, FRACP, FAA is Chairman of the MAB and the inventor of nasal CPAP for treating obstructive sleep apnea. He is Professor of Medicine and Director of the David Read Research Laboratory and Director of the Australian Centre for Advanced Medical Technology at the Sydney University Medical School. He is Head of the Centre for Respiratory Failure and Sleep Disorders, as well as a thoracic physician at the Royal Prince Alfred Hospital. He is also Academic head of the Pediatric Sleep Laboratory, New Children's Hospital, and Sydney Children's Hospital. Dr. Sullivan is a Fellow of the Royal Australian College of Physicians, and Fellow of the Australian Academy of Science.

Helmut Teschler, MD, is Associate Professor and Head of the Department of Respiratory Medicine and Sleep Medicine, Ruhrlandklinik, Medical Faculty, University of Essen, Germany. He is a Fellow of each of the following Associations: German Pneumology Society, American Thoracic Society, European Respiratory Society and American Sleep Disorders Association.

J. Woodrow Weiss, MD, is Associate Professor of Medicine and Co-Chairman of the Division of Sleep Medicine at Harvard Medical School, as well as Chief, Pulmonary & Critical Care Medicine, Beth Israel Deaconess Medical Center, Boston, MA.

B. Tucker Woodson, MD, FACS, is an Associate Professor of Otolaryngology and Communication Sciences at the Medical College of Wisconsin. He is a Fellow of the American Academy of Otolaryngology - Head and Neck Surgery and the American College of Surgeons. Dr. Woodson is the Director of the Medical College of Wisconsin/Froedert Memorial Lutheran Hospital Center for Sleep. He is active on multiple committees for the American Academy of Sleep Medicine and American Academy of Otolaryngology.

## Item 2 Properties

Our principal executive offices and U.S. distribution facilities, consisting of approximately 144,000 square feet, are located in Poway (North San Diego County), California in a building we own; part of the building is leased to other companies. Primary manufacturing operations are situated in Sydney, Australia in a 120,000 square foot facility also owned by us.

Sales and warehousing facilities are leased in Oxford, England; Moenchengladbach, Germany; Lyon, France; Trollhaettan, Sweden and Singapore. Prior to moving our executive offices and distribution facilities to Poway, California, we leased space for this purpose in San Diego, California. Our lease on those premises expires in 2005. In August 2000, we began subleasing those premises to another company.

MAP's principal offices are located in Munich Germany in a 45,000 square foot facility leased by us. MAP's subsidiaries also lease sales and warehouse facilities in Paris, Lyon and Nantes, France; Lyss, Switzerland; Villach, Austria and s'Hertogenbosch, The Netherlands.



## Item 3 Legal Proceedings

We are currently engaged in litigation relating to the enforcement and defense of certain of our patents.

In January 1995, we filed a complaint in the United States District Court for the Southern District of California seeking monetary damages from and injunctive relief against Respironics for alleged infringement of three of our patents. In February 1995, Respironics filed a complaint in the United States District Court for the Western District of Pennsylvania against us seeking a declaratory judgment that Respironics does not infringe claims of these patents and that our patents are invalid and unenforceable. The two actions were combined and are proceeding in the United States District Court for the Western District of Pennsylvania. In June 1996, we filed an additional complaint against Respironics for infringement of a fourth ResMed patent, and that complaint was consolidated with the earlier action. As of this date, Respironics has brought three partial summary judgment motions for non-infringement of the ResMed patents; the Court has granted each of the motions. In December 1999, in response to the Court's ruling on Respironics' third summary judgment motion, the parties jointly stipulated to a dismissal of charges of infringement under the fourth ResMed patent, with us reserving the right to reassert the charges in the event of a favorable ruling on appeal. It is our intention to appeal the summary judgment rulings after a final judgment in the consolidated litigation has been entered in the District Court proceedings.

In January 2001, MAP Medizin-Technologie GmbH filed a lawsuit in the Civil Chamber of Munich Court against Hofrichter GmbH seeking actual and exemplary monetary damages for the unauthorized and infringing use of our trademarks and patents. An initial decision has been made in favor of MAP. Hofrichter has filed an appeal and have sort Court determination that the MAP patents do not apply to certain Hofrichter products.

While we are prosecuting the above actions, there can be no assurance that we will be successful.

On March 31, 2000, we filed a lawsuit in the United States District court for the Southern District of California against MPV Truma and Tiara Medical Systems, Inc., seeking actual and exemplary monetary damages and injunctive relief for the unauthorized and infringing use of our trademarks, trade dress, and patents related to our Mirage mask. The parties reached a confidential out of court settlement on April 9, 2001.

In May, 1995, Respironics and its Australian distributor filed a Statement of Claim against us and Dr. Farrell in the Federal Court of Australia, alleging that we engaged in unfair trade practices. The Statement of Claim asserted damage claims for lost profits on sales in the aggregate amount of approximately $1,000,000. The parties reached a confidential out of court settlement of this Action on April 16, 2001.

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

None.



# PART II

## Item 5 Market for Registrant's Common Equity and Related Stockholder Matters

Our Common Stock commenced trading on June 2, 1995 on The NASDAQ National Market under the symbol "RESM". On September 30, 1999, we transferred our primary listing to the New York Stock Exchange (NYSE) under the symbol "RMD". The following table sets forth for the fiscal periods indicated the high and low closing prices for the Common Stock as reported by the New York Stock Exchange.

<TABLE>
<CAPTION>

| | 2001 | | 2000 | |
|---|---|---|---|---|
| | High | Low | High | Low |
| <S> | <C> | <C> | <C> | <C> |
| Quarter One, ended September 30, | $38.38 | $24.63 | $17.19 | $11.82 |
| Quarter Two, ended December 31, | 41.50 | 25.50 | 23.13 | 12.75 |
| Quarter Three, ended March 31, | 47.00 | 36.65 | 39.62 | 20.34 |
| Quarter Four, ended June 30, | 57.68 | 37.91 | 38.06 | 22.00 |

</TABLE>

As of September 7, 2001, there were approximately 13,500 beneficial holders of our Common Stock. We have not paid any cash dividends on our common stock since prior to the initial public offering of our common stock and we do not currently intend to pay cash dividends in the foreseeable future. Management anticipates that all of our earnings and other cash resources, if any, will be retained for the operation and expansion of our business and for general corporate purposes.

Recent Sales of Unregistered Securities

On June 20, 2001, we issued $150.0 million of 4% convertible subordinated notes due 2006 to initial purchasers including Merrill Lynch, Pierce Fenner & Smith Incorporated, Deutsche Banc Alex. Brown Inc., William Blair & Company, LLC, Macquarie Bank, and UBS Warburg LLC. The discount to the initial purchasers on their purchase of the notes was $4,650,000. On July 3, 2001, we issued an additional $30.0 million in notes to the initial purchasers upon exercise of the initial purchasers' over allotment option, with an additional discount to the initial purchasers of $930,000. This increased the total amount of convertible subordinated notes issued to $180.0 million, with a total discount to the initial purchasers of $5,580,000.

The notes were issued pursuant to an exemption from the registration requirements of the Securities and Exchange Act of 1933, as amended, or the Securities Act, set forth under Rule 144A of the Securities Act. Accordingly, the notes were offered and sold only to "qualified institutional buyers" as defined in Rule 144A or in offshore transactions outside the United States that met the requirements of Rule

903 of Regulation S under the Securities Act.

The notes are subject to an indenture between us and American Stock Transfer & Trust Company, as trustee. The notes are convertible, at the option of the holder, at any time on or prior to maturity, into shares of our common stock at a conversion price of $60.60 per share, which is equal to a conversion rate of 16.5017 shares per $1,000 principal amount of notes. The conversion price is subject to adjustment. The notes bear interest at 4% per year, payable semiannually on June 20 and December 20 of each year, beginning December 20, 2001.

We may redeem some or all of the notes at any time before June 20, 2004 at a redemption price of $1,000 per $1,000 principal amount of notes, plus accrued and unpaid interest, if any, to the redemption date, if (a) the closing price of our common stock has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day before the date of mailing of the provisional redemption notice and (b) a shelf registration statement covering resale of the notes and the common stock issuable upon conversion of the notes is effective and available for use and expected to remain effective and available for use for the 30 days following the provisional redemption date. Upon any such provisional redemption,



we will make an additional payment in cash equal to $166.67 per $1,000 principal amount of notes, less the amount of any interest actually paid on the notes before the provisional redemption date. We may also redeem some or all of the notes at any time on or after June 22, 2004, but prior to June 20, 2005, at a redemption price equal to 101.6% of the principal amount of notes redeemed and at any time after June 19, 2005, at a redemption price equal to 100.8% of the principal amount of notes redeemed, plus in any case, accrued and unpaid interest, if any, to the redemption date, if the closing price of our common stock has exceeded 130% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day before the date of mailing of the optional redemption notice.

The notes are general unsecured obligations and are subordinated to all of our existing and future senior indebtedness and will be effectively subordinated to all of the indebtedness and liabilities of our subsidiaries. The indenture governing the notes will not limit the incurrence by us or our subsidiaries of senior indebtedness or other indebtedness. The notes mature on June 20, 2006.

## Item 6 Selected Financial Data

The following table summarizes certain selected consolidated financial data for, and as of the end of, each of the fiscal years in the five-year period ended June 30, 2001. The data set forth below should be read in conjunction with the Consolidated Financial Statements and related Notes included elsewhere in this Report.

<TABLE>
<CAPTION>

| Consolidated Statement of Income Data: | Years Ended June 30, 2001 | 2000 | 1999 | 1998 | 1997 |
|---|---|---|---|---|---|
| | (In thousands, except per share data) | | | | |
| <S> | <C> | <C> | <C> | <C> | <C> |
| Net revenues | $155,156 | $115,615 | $88,627 | $66,519 | $49,180 |
| Cost of sales | 50,377 | 36,991 | 29,416 | 23,069 | 20,287 |
| Gross profit | 104,779 | 78,624 | 59,211 | 43,450 | 28,893 |
| Selling, general and administrative Expenses | 49,364 | 36,987 | 27,414 | 21,093 | 16,759 |
| Provision for restructure | 550 | - | - | - | |
| In-process research and development write off | 17,677 | - | - | - | - |
| Research and development expenses | 11,146 | 8,499 | 6,542 | 4,994 | 3,807 |
| Total operating expenses | 78,737 | 45,486 | 33,956 | 26,087 | 20,566 |
| Income from operations | 26,042 | 33,138 | 25,255 | 17,363 | 8,327 |
| Other income (expenses): | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Interest income (expense), net | (762) | 801 | 779 | 1,011 | 1,205 |
| Government grants | 72 | 279 | 833 | 611 | 316 |
| Other, net | 1,962 | (52) | (2,290) | (2,873) | 1,239 |
| Total other income (expenses) | 1,272 | 1,028 | (678) | (1,251) | 2,760 |
| Income before income taxes | 27,314 | 34,166 | 24,577 | 16,112 | 11,087 |
| Income taxes | 15,684 | 11,940 | 8,475 | 5,501 | 3,622 |
| Net income | $ 11,630 | $ 22,226 | $16,102 | $10,611 | $ 7,465 |
| Basic earnings per share | $ 0.37 | $ 0.74 | $ 0.55 | $ 0.37 | $ 0.26 |
| Diluted earnings per share | $ 0.35 | $ 0.69 | $ 0.52 | $ 0.35 | $ 0.26 |
| Basic shares outstanding | 31,129 | 30,153 | 29,416 | 29,000 | 28,756 |
| Diluted shares outstanding | 33,484 | 32,303 | 31,068 | 30,044 | 29,268 |



| | As of June 30, | | | | |
|---|---|---|---|---|---|
| | 2001 | 2000 | 1999 | 1998 | 1997 |
| Consolidated Balance Sheet Data: | (In thousands) | | | | |
| Working capital | 144,272 | $ 47,550 | $32,529 | $32,759 | $34,395 |
| Total assets | 288,090 | 115,594 | 89,889 | 64,618 | 54,895 |
| Long-term debt, less current maturities | 150,000 | - | - | - | 274 |
| Total stockholders' equity | 100,366 | 93,972 | 71,647 | 50,773 | 44,625 |

Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

Management's discussion and analysis of financial condition and results of operations should be read in conjunction with selected financial data and consolidated financial statements and notes, included herein.

We design, manufacture and market equipment for the diagnosis and treatment of sleep disordered breathing conditions, including obstructive sleep apnea. Our net revenues are generated from the sale of our various flow generator devices, nasal mask systems, accessories and other products, and, to a lesser extent from royalties.

We have invested significant resources in research and development and product enhancement. Since 1989, we have developed several innovations to the original CPAP device to increase patient comfort and to improve ease of product use. We have been developing products for automated treatment, titration and monitoring of OSA, such as the AutoSet T flow generator. Our research and development expenses have been subsidized in part by grants and tax incentives from the Australian federal government.

On February 16, 2001, we acquired all of the outstanding shares of MAP. The total transaction was valued at approximately $70 million paid in cash and the assumption of bank debt. MAP designs, manufactures and distributes medical devices for the diagnosis and treatment of SDB, with a particular focus on OSA.

The acquisition has been accounted for as a purchase and accordingly, the results of operations of MAP have been included in our consolidated financial statements from February 16, 2001. The excess of the purchase price over the fair market value of the net identifiable assets acquired of $47.1 million has been recorded as goodwill and is currently being amortized on a straight line basis over 20 years.

As a consequence of the MAP acquisition, we incurred non-recurring acquisition charges of $550,000 for restructuring of MAP's unprofitable

French operations and $17,677,000 for purchased in-process research and development.

Purchased in-process research and development of $17,677,000 was expensed upon acquisition of MAP because technological feasibility of the products under development had not been established and no further alternative uses existed. The value of in process technology was calculated by identifying research projects in areas for which technological feasibility had not been established, estimating the costs to develop the purchased in process technology into commercially viable products, estimating the resulting net cash flows from such products, discounting the net cash flows to present value, and applying the reduced percentage completion of the projects thereto. The discount rates used in the analysis were between 27% and 33% and were based on the risk profile of the acquired assets.

All purchased research and development projects related to medical equipment for the treatment of sleep disordered breathing, primarily relating to the development of mask interface systems and



autotitrating devices for the treatment of obstructive sleep apnea and associated disorders. Key assumptions used in the analysis included gross margins ranging from 70% to 80%. As of the date of acquisition, the mask interface systems are expected to be completed and commercially available in 2002 and versions of the autotitrating devices between 2003 and 2005. These projects have estimated costs to complete totalling approximately $2.0 million.

We believe that the assumptions used to value the acquired intangible assets were reasonable at the time of acquisition. No assurance can be given, however, that the underlying assumptions used to estimate expected project revenues, development costs or profitability, or events associated with such projects, will transpire as estimated. For these reasons, among others, actual results may vary from the projected results.

Our income tax rate is governed by the laws of the regions in which our income is recognized. To date, a substantial portion of our income has been subject to income tax in Australia where the statutory rate is 34%. During fiscal 2001, 2000 and 1999, our effective tax rate has fluctuated from approximately 34% to approximately 35%. These fluctuations have resulted from, and future effective tax rates will depend upon, numerous factors, including the amount of research and development expenditures for which a 125% Australian tax deduction is available, the level of non-deductible expenses, and the use of available net operating loss carryforward deductions and other tax credits or benefits available to us under applicable tax laws.

Fiscal Year Ended June 30, 2001 Compared to Fiscal Year Ended June 30, 2000

Net revenues. Net revenues increased in fiscal 2001 to $155.2 million from $115.6 million in fiscal 2000, an increase of $39.5 million or 34%. This increase was primarily attributable to an increase in unit sales of our flow generators and accessories in North and Latin America where net revenues increased to $79.9 million from $62.7 million and in Europe, where net revenues increased to $60.5 million from $40.5 million. Net revenues were unfavorably impacted by a decline in European foreign exchange rates.

Gross profit. Gross profit increased in fiscal 2001 to $104.8 million from $78.6 million in fiscal 2000, an increase of $26.2 million or 33%. The increase resulted primarily from increased unit sales during fiscal 2001. Gross profit as a percentage of net revenues was 68%, consistent with fiscal 2000. Lower flow generator selling prices were offset by a decline in the Australian dollar, improved manufacturing efficiencies and increased sales of higher margin mask system units.

Selling, general and administrative expenses. Selling, general and administrative expenses increased in 2001 to $49.4 million from $37.0 million for 2000, an increase of $12.4 million or 33%. As a percentage of net revenues, selling, general and administrative expenses were steady in fiscal 2001, compared to fiscal 2000 at 32%. The gross increase in expenses was due primarily to an increase to 471 from 281 in the number of sales and administrative personnel and other expenses related to the increase in our sales.

Research and development expenses. Research and development expenses increased in fiscal 2001 to $11.1 million from $8.5 million in fiscal 2000, an increase of $2.6 million or 31%. As a percentage of net revenues, research and development expenses remained static in fiscal 2001 at 7%. The dollar increase in research and development expenses was

due primarily to an increase in clinical trial costs, personnel and external consultancy fees.

Other income (expense). Other income (expense) improved in fiscal 2001 to $1.3 million from $1.0 million for fiscal 2000, an increase of $0.3 million. This improvement was due primarily to foreign currency gains incurred in our foreign currency hedging structures, partially offset by interest expense associated with the purchase of MAP. Net foreign currency gains for fiscal 2001 were $2.0 million compared to net foreign currency losses of $0.2 million in 2000.



Income taxes. Our effective income tax rate for fiscal 2001 before MAP acquisition charges of $0.6 million for restructuring costs and in-process research and development write off of $17.7 million was 34.4% down from 34.9% for fiscal 2000. This reduction was primarily due to the reduction in Australian corporate tax rates from 36% to 34% on July 1, 2000 and to additional research and development expenses in Australia for which we received a 125% deduction for tax purposes.

Fiscal Year Ended June 30, 2000 Compared to Fiscal Year Ended June 30, 1999

Net revenues. Net revenues increased in fiscal 2000 to $115.6 million from $88.6 million in fiscal 1999, an increase of $27 million or 30%. This increase was primarily attributable to an increase in unit sales of our flow generators and accessories in the Americas where net revenues increased to $62.7 million from $51.0 million and, to a lesser extent, in Europe, where net revenues increased to $40.5 million from $30.2 million. Net revenues were unfavorably impacted by a decline in European foreign exchange rates and changes in domestic reimbursement regulations with respect to our SULLIVAN VPAP II ST systems.

Gross profit. Gross profit increased in fiscal 2000 to $78.6 million from $59.2 million in fiscal 1999, an increase of $19.4 million or 33%. The increase resulted primarily from increased unit sales during fiscal 2000. Gross profit as a percentage of net revenues increased in fiscal 2000 to 68% from 66.8% in 1999. The increase was due to improved manufacturing efficiencies, a decline in the Australian Dollar and increased sales of higher margin mask system units.

Selling, general and administrative expenses. Selling, general and administrative expenses increased in 2000 to $37.0 million from $27.4 million for 1999, an increase of $9.6 million or 35%. As a percentage of net revenues, selling, general and administrative expenses increased in fiscal 2000 to 32% from 31% for fiscal 1999. The gross increase in expenses was due primarily to an increase to 281 from 212 in the number of sales and administrative personnel and other expenses related to the increase in our sales.

Research and development expenses. Research and development expenses increased in fiscal 2000 to $8.5 million from $6.5 million in fiscal 1999, an increase of $2.0 million or 30%. As a percentage of net revenues, research and development expenses remained static in fiscal 2000 at 7.4%. The dollar increase in research and development expenses was due primarily to an increase in research and development equipment, personnel and external consultancy fees.

Other income (expense). Other income (expense) improved in fiscal 2000 to $1.0 million from a loss of $0.7 million for fiscal 1999, a change of $1.7 million. This improvement was due primarily to reduced losses incurred in our foreign currency hedging structures, partially offset by reduced government grants. Net foreign currency losses for fiscal 2000 were $0.2 million compared to net foreign currency losses of $2.5 million in 1999.

Income taxes. Our effective income tax rate for fiscal 2000 increased to approximately 34.9% from approximately 34.5% for fiscal 1999. This increase was primarily due to the high relative taxes incurred in France and Germany. These higher tax rates were partially offset by additional research and development expenses in Australia for which we received a 125% deduction for tax purposes.

Liquidity and Capital Resources

As of June 30, 2001 and June 30, 2000, we had cash and cash equivalents and marketable securities available for sale of approximately $102.8 million and $22.0 million, respectively. Our working capital approximated $144.3 million and $47.6 million, respectively, at June 30, 2001 and 2000.

The increase in working capital balances reflects cash received from our $150 million subordinated convertible note issuance that occurred on June 20, 2001.

We have financed our operations and capital expenditures through cash generated from operations and, to a lesser extent, through sales of common stock and our 4% convertible subordinated notes issued June 20, 2001. During the fiscal years ended June 30, 2001 and 2000, our operations generated cash of approximately $29.5 million and $20.3 million, respectively, primarily as a result of continued increases in net revenues, offset in part by increases in accounts receivable, inventory and prepayments. Cash and cash equivalents and marketable securities available for sale increased to $102.8 million at June 30, 2001 from $22.0 million at June 30, 2000, an increase of $80.8 million. During fiscal 2001 and 2000, approximately $7.9 million and $6.4 million of cash was received from the issue of common stock upon exercise of common stock options.

Our investing activities (excluding the purchases and sales of marketable securities and business acquisitions) for fiscal years 2001 and 2000 aggregated $30.6 million and $20.4 million, respectively. The majority of the fiscal 2001 investing activities were for the purchase of production tooling and equipment, office furniture, research and development equipment and costs associated with the continuing installation of our Oracle applications computer system. In addition, we paid $17.2 million associated with the purchase of the new U.S. headquarters in Poway, California. As a result, our June 30, 2001 balance sheet reflects an increase in net property, plant and equipment to approximately $55.1 million at June 30, 2001, from $36.6 million at June 30, 2000, an increase of approximately $18.5 million.

On February 16, 2001, our wholly owned German subsidiary, ResMed Beteiligungs GmbH, acquired all the common stock of MAP for total consideration, including acquisition costs, of $55.4 million. We also assumed approximately $14.5 million of bank debt in connection with the acquisition.

On June 20, 2001 we issued $150 million of 4% convertible subordinated notes due 2006; an additional $30 million of these notes were issued on July 3, 2001 upon exercise of the initial purchasers' over allotment option. For additional discussion regarding these notes, see "Item 5 - Market for Registrant's Common Equity and Related Stockholder Matters" and note 7 to the Consolidated Financial Statements included with this report.

The results of our international operations are affected by changes in exchange rates between currencies. Changes in exchange rates may negatively affect our consolidated net revenue and gross profit margins from international operations. We have a substantial exposure to fluctuations in the Australian dollar, with respect to our manufacturing and research activities, which is managed through foreign currency option contracts.

We expect to satisfy all of our short-term liquidity requirements through a combination of cash on hand and cash generated from operations.

New Accounting Pronouncements

In July 2001, the Financial Accounting Standards Board ("FASB") issued SFAS Financial Accounting Standards ("SFAS") No. 142, Goodwill and Other Intangible Assets. We will adopt SFAS 142 effective July 1, 2001. SFAS 142 requires goodwill and intangible assets with indefinite useful lives to no longer be amortized, but instead be tested for impairment at least annually.

SFAS 142 provides a six-month transitional period from the effective date of adoption for us to perform an assessment of whether there is an indication that goodwill is impaired. To the extent that an indication of impairment exists, we must perform a second test to measure the amount of the



impairment. The second test must be performed as soon as possible, but no later than the end of the fiscal year. Any impairment measured as of the date of adoption will be recognized as the cumulative effect of a change in accounting principle. Because of the extensive effort needed to complete this assessment, we have not determined whether there is any indication that goodwill is impaired or estimated the amount of any potential impairment.

Effective July 1, 2001, we will also adopt FASB SFAS No. 141, Business Combinations. SFAS 141 requires that the purchase method of accounting be used for all business combinations initiated after June 30, 2001. We have evaluated the impact of SFAS 141 and believe that it will not have a material impact on our results of operations, financial position or

liquidity.

SFAS No. 133, 'Accounting for Derivative Instruments and Hedging Activities', SFAS No. 137, 'Accounting for Derivative Instruments and Hedging Activities' - Deferral of the Effective Date of FASB Statement No. 133 (an amendment of FASB Statement No. 133), and SFAS 138, 'Accounting for Certain Derivative Instruments and Certain Hedging Activities' (an amendment of FASB Statement No. 133) were issued by the FASB in June 1998, June 1999 and June 2000, respectively and were effective for our quarter ended September 30, 2000. SFAS 133 standardizes the accounting for derivative instruments, including certain derivative instruments embedded in other contracts. Under the standard, entities are required to carry all derivative instruments in the statement of financial position at fair value. The accounting for changes in the fair value (i.e., gains or losses) of a derivative instrument depends on whether it has been designated and qualifies as part of a hedging relationship and, if so, on the reason for holding it. If certain conditions are met, entities may elect to designate a derivative instrument as a hedge of exposures to changes in fair values, cash flows, or foreign currencies. If the hedged exposure is a fair value exposure, the gain or loss on the derivative instrument is recognized in earnings in the period of change together with the offsetting loss or gain on the hedged item attributable to the risk being hedged. If the hedged exposure is a cash flow exposure, the effective portion of the gain or loss on the derivative instrument is reported initially as a component of other comprehensive income (outside earnings) and subsequently reclassified into earnings when the forecasted transaction affects earnings. Any amounts excluded from the assessment of hedge effectiveness as well as the ineffective portion of the gain or loss is reported in earnings immediately. Accounting for foreign currency hedges is similar to the accounting for fair value and cash flow hedges. If the derivative instrument is not designated as a hedge, the gain or loss is recognized in earnings in the period of change.

Due to the restrictive definition of hedge effectiveness contained in SFAS 133, our hedging contracts do not have hedge effectiveness and are therefore marked to market with resulting gains or losses being recognized in earnings in the period of change. This was consistent with our previous accounting policy and therefore adoption of SFAS 133 did not have a material impact on our financial position or results of operation.

In December 1999, the Securities and Exchange Commission issued Staff Accounting Bulletin, ("SAB") No. 101 Revenue Recognition in Financial Statements', which was effective for the first quarter of fiscal 2001. SAB 101 requires, among other things, that license and other up-front fees be recognized over the term of the agreement, unless the fees are in exchange for products delivered or services performed that represent the culmination of a separate earnings process. This did not have a material impact on our financial position or results of operation.

In March 2000, the FASB issued FASB Interpretation No. 44 ("FIN 44"), Accounting for Certain Transactions Involving Stock Compensation - an Interpretation of Accounting Principles Board Opinion No. 25. FIN 44 was generally effective July 1, 2000. The application of FIN 44 did not have a material impact on our consolidated financial statements.



Item 7A Quantitative and Qualitative Disclosures about Market and Business Risks

Foreign Currency Market Risk

Our functional currency is the U.S. dollar although we transact business in various foreign currencies including a number of major European currencies as well as the Australian dollar. We have significant foreign currency exposure through both our Australian manufacturing activities and international sales operations.

We have established a foreign currency hedging program using purchased currency options to hedge foreign-currency-denominated financial assets, liabilities and manufacturing expenditure. The goal of this hedging program is to economically guarantee or lock in the exchange rates on our foreign currency exposures denominated in Euro's and the Australian dollar. Under this program, increases or decreases in our foreign-currency-denominated financial assets, liabilities, and firm commitments are partially offset by gains and losses on the hedging instruments.

The table below provides information about our foreign currency derivative financial instruments and presents such information in U.S. dollar equivalents. The table summarizes information on instruments and transactions that are sensitive to foreign currency exchange rates, including foreign currency call options held at June 30, 2001. The table presents the notional amounts and weighted average exchange rates by contractual maturity dates for our foreign currency derivative financial instruments. These notional amounts generally are used to calculate payments to be exchanged under the options contracts.

<TABLE>
<CAPTION>

| | Fiscal Year | | | Fair Value | |
|---|---|---|---|---|---|
| | 2002 | 2003 | Total | Assets/ (Liabilities) | |
| | (In thousands except exchange rates) | | | | |
| As of June 30, | | | | | |
| 2001 2000 | | | | | |
| <S> | <C> | <C> | <C> | <C> | <C> |
| Foreign Exchange Call Options | | | | | |
| (Receive AUS$/Pay U.S.$) | | | | | |
| Option amount | $214,000 | - | $ 214,000 | $ 577 | $ 534 |
| Average contractual exchange rate | AUS $1 = USD 0.598 | | AUS $1 = USD 0.598 | | |
| (Receive AUS$/Pay Euro) | | | | | |
| Option amount | $ 9,368 | $ 384 | $ 9,752 | $ 20 | $ 367 |
| Average contractual exchange rate | AUS $1 = Euro 0.659 | AUS $1 = Euro 0.667 | AUS $1 = Euro 0.6597 | | |

</TABLE>

Interest Rate Risk

We are exposed to risk associated with changes in interest rates affecting the return on investments.

At June 30, 2001, we maintained a portion of our cash and cash equivalents in financial instruments with original maturities of three months or less. We maintain a short-term investment portfolio containing financial instruments in which the majority have original maturities of greater than three months but less than twelve months. These financial instruments, principally comprised of corporate obligations, are subject to interest rate risk and will decline in value if interest rates increase. A hypothetical 100 basis point change in interest rates during the twelve months ended June 30, 2001, would have resulted in approximately $0.2 million change in pretax income. We do not use derivative financial instruments in our investment portfolio.



Forward-Looking Statements

This report on Form 10-K contains or may contain certain forward-looking statements and information that are based on the beliefs of our management as well as estimates and assumptions made by, and information currently available to our management. The words "believe," "expect," "anticipate," "estimate," "plan," "future" and other similar expressions generally identify forward-looking statements, including, in particular, statements regarding the development and approval of new products and product applications, market expansion and pending litigation. These forward-looking statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. You are cautioned not to place undue reliance on these forward-looking statements. Such forward-looking statements reflect the views of our management at the time such statements are made and are subject to a number of risks, uncertainties, estimates and assumptions, including, without limitation, and in addition to those identified in the text surrounding such statements, those identified below and elsewhere in this report. In addition, important factors to consider in evaluating such forward-looking statements include changes or developments in social, economic, market, legal or regulatory circumstances, changes in our business or growth strategy or an inability to execute our strategy due to changes in our industry or the economy generally, the emergence of new or growing competitors, the actions or omissions of third parties, including suppliers, customers, competitors and governmental authorities, and various other factors. Should any one or more of these risks or uncertainties materialize, or the underlying estimates or assumptions prove incorrect, actual results may vary significantly from those expressed in such forward-looking statements, and there can be no assurance that the forward-looking statements contained in this report will in fact occur.

The risks and uncertainties that may affect our business, financial condition or results of operations include the following:

Our inability to compete successfully in our markets may harm our business.

The markets for our SDB products are highly competitive and are characterized by frequent product improvements and evolving technology. Our ability to compete successfully depends, in part, on our ability to develop innovative new products and to be the first to market with those products. The development of innovative new products by our competitors or the discovery of alternative treatments or potential cures for the conditions that our products treat could result in our products becoming noncompetitive or obsolete.

Additionally, some of our competitors have greater financial, research and development, manufacturing and marketing resources than we do. The past several years have seen a trend towards consolidation in the health care industry and in the markets for our products. Industry consolidation could result in greater competition if our competitors combine their resources or if our competitors are acquired by other companies with greater resources than ours. This competition could increase pressure on us to reduce the selling prices of our products or could cause us to increase our spending on research and development and sales and marketing. If we are unable to develop innovative new products, maintain competitive pricing, and offer products that consumers perceive to be as reliable as those of our competitors, our sales or gross margins could decrease which would harm our business.



Our business depends on our ability to market effectively to dealers of home health care products and sleep clinics.

We market our products primarily to home health care dealers and to sleep clinics that diagnose OSA and other sleep disorders. We believe that home health care dealers and sleep clinics play a significant role in determining which brand of CPAP product a patient will use. For example, in the United States, when a physician at a sleep clinic prescribes the use of a CPAP product, the patient typically purchases the product from a home health care dealer. The physician may or may not prescribe a specific brand of CPAP product. If a specific brand is prescribed, we believe the brand prescribed depends upon the brand of CPAP product that is used in the sleep clinic. If a specific brand is not prescribed, the home health care dealer may recommend a specific brand. Occasionally, even if the physician prescribes a specific brand, a home health care dealer may substitute a competitive CPAP product for the patient. We have limited resources to market to the more than 2,000 U.S. sleep clinics and the more than 4,000 home health care dealer branch locations, most of which use, sell or recommend several brands of CPAP products. In addition, home health care dealers have experienced price pressures as government and third-party reimbursement have declined for home care products, and home health care dealers are requiring price discounts and longer periods of time to pay for products purchased from us. We cannot assure you that sleep clinic physicians will continue to prescribe our products, or that home health care dealers or patients will not substitute competing products when a prescription specifying our products has been written. The success of our business depends on our ability to market effectively to home health care dealers and sleep clinics and to ensure that our products are properly marketed and sold by these third parties.

We intend to expand our marketing activities to target the population with a predisposition to SDB as well as primary care physicians and specialists. We cannot assure you that these marketing efforts will be successful in increasing awareness of our products.

If we are unable to support our continued growth, our business could suffer.

We have experienced rapid and substantial growth. As we continue to grow, the complexity of our operations increases, placing greater demands on our management. Our ability to manage our growth effectively depends upon our ability to implement and improve our financial and management information systems on a timely basis and to effect other changes in our business. Unexpected difficulties during expansion, the failure to attract and retain qualified employees, the failure to successfully replace or upgrade our management information systems, the failure to manage costs or our inability to respond effectively to growth or plan for future expansion could cause our growth to stop. If we fail to manage our growth, our business could suffer.

If we fail to integrate our recent acquisition in Germany with our operations, our business could suffer.

On February 16, 2001, we acquired all of the outstanding shares of MAP located near Munich, Germany. We are currently in the process of integrating our operations with those of MAP. The integration requires significant efforts from each company. We may find it difficult to

integrate the operations of MAP. MAP personnel may leave MAP because of the acquisition and MAP licensees, distributors or suppliers may terminate their arrangements with MAP, or demand amended terms to these arrangements. Additionally, our management may have their attention diverted while trying to integrate the two companies. This diversion or these difficulties in integration could have an adverse impact on us. If we are not able to successfully integrate the operations of MAP, we may not realize the anticipated benefits of the MAP acquisition.



We manufacture substantially all of our products outside the United States and sell a significant portion of our products in non-U.S. markets, subjecting us to various risks relating to international activities that could adversely affect our overall profitability.

Sales outside North and Latin America accounted for approximately 48%, 46%, and 43% of our net revenues in fiscal years 2001, 2000 and 1999, respectively. As a result of the MAP acquisition, we expect that sales within these areas will account for over 50% of our net revenues in the foreseeable future. Our sales outside of North America and our operations in Europe, Australia and Asia are subject to several difficulties and risks that are separate and distinct from those we face in our domestic operations, including:

. fluctuations in currency exchange rates;

. tariffs and other trade barriers;

. compliance with foreign medical device manufacturing regulations;

. reduction in third party payer reimbursement for our products;

. inability to obtain import licenses;

. changes in trade policies and in domestic and foreign tax policies;

. possible changes in export or import restrictions; and

. the modification or introduction of other governmental policies with potentially adverse effects.

Fluctuations in foreign currency exchange rates could result in declines in our reported sales and earnings.

Since our international sales and a significant portion of our manufacturing costs are denominated in local currencies and not in U.S. dollars, our reported sales and earnings are subject to fluctuations in foreign exchange rates. We had foreign currency transaction losses in recent periods and may have further losses in the future. We expect that international sales will continue to be a significant portion of our business and that a significant portion of our manufacturing costs will continue to be denominated in Australian dollars.

Government and private insurance plans may not reimburse patients for our products, which could result in reductions in sales or selling prices for our products.

Our ability to sell our products depends in large part on the extent to which reimbursement for the cost of our products will be available from government health administration authorities, private health insurers and other organizations. These third party payors are increasingly challenging the prices charged for medical products and services. Therefore, even if a product is approved for marketing, we cannot assure you that reimbursement will be allowed for such product or that the reimbursement amount will be adequate or, if adequate, will not subsequently be reduced. For example, in some markets, such as Spain, France and Germany, government reimbursement is currently available for purchase or rental of our products but is subject to constraints such as price controls or unit sales limitations. In other markets, such as Australia and the United Kingdom, there is currently limited or no reimbursement for devices that treat sleep disordered breathing related respiratory conditions. Additionally, future legislation or regulation concerning the health care industry or third party or governmental coverage and reimbursement, particularly, legislation or regulation limiting consumers' reimbursement rights may harm our business. As we continue to develop new products, those products will generally not qualify for reimbursement, if at all, until they are approved for marketing.



In the United States, we sell our products primarily to home health care dealers and to sleep clinics. We do not file claims and bill governmental programs and other third party payors directly for reimbursement for our products. However, we are still subject to laws and regulations relating

to governmental reimbursement programs, particularly Medicaid and Medicare.

In particular, the federal Anti-Kickback Law prohibits persons from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce either the referral of an individual, or the furnishing, recommending or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. The government has interpreted this law broadly to apply to the marketing and sales activities of manufacturers and distributors like us. Many states have adopted laws similar to the federal Anti-Kickback Law. We are also subject to other federal and state fraud laws applicable to payment from any third party payer. These laws prohibit persons from knowingly and willfully filing false claims or executing a scheme to defraud any healthcare benefit program, including private third party payors. These laws may apply to manufacturers and distributors who provide information on coverage, coding, and reimbursement of their products to persons who do bill third party payors. Any violation of these laws and regulations could result in civil and criminal penalties, including fines.

Complying with FDA and other regulations is an expensive and time-consuming process, and any failure to comply could result in substantial penalties.

We are subject to various federal, state, local and international regulations regarding the testing, manufacture, distribution, marketing, promotion, record keeping and reporting of our products. In particular, our failure to comply with FDA regulations could result in, among other things, recalls of our products, substantial fines and/or criminal charges against us and our employees.

Product sales, introductions or modifications may be delayed or canceled as a result of the FDA or similar foreign regulations, which could cause our sales to decline.

Before we can market or sell a new medical device in the United States, we must obtain FDA clearance, which can be a lengthy and time-consuming process. We generally receive clearance from the FDA to market our products in the United States under Section 510(k) of the Federal Food, Drug, and Cosmetic Act or our products are exempt from the 510(k) clearance process. We have modified some of our 510(k) approved products without submitting new 510(k) notices, which we do not believe were required. However, if the FDA disagrees with us and requires us to submit new 510(k) notifications for modifications to our existing products, we may be required to stop marketing the products while the FDA reviews the 510(k) notification. Any new product introduction or existing product modification could be subjected to a lengthier, more rigorous FDA examination process. For example, in certain cases we may need to conduct clinical trials of a new product prior to submitting a 510(k) notice. Additionally, we may be required to obtain premarket approvals for our products. The requirements of these more rigorous processes could delay product introductions and increase the costs associated with FDA compliance. Marketing and sale of our products outside the United States are also subject to regulatory clearances and approvals, and if we fail to obtain these regulatory approvals, our sales could suffer. We cannot assure you that any new products we develop will receive required regulatory approvals from U.S. or foreign regulatory agencies.



Off label marketing of our products could result in substantial penalties.

Clearance under Section 510(k) only permits us to market our products for the uses indicated on the labeling cleared by the FDA. We may request additional label indications for our current products, and the FDA may deny those requests outright, require additional expensive clinical data to support any additional indications or impose limitations on the intended use of any cleared products as a condition of clearance. If the FDA determines that we have marketed our products for off label use, we could be subject to fines, injunctions or other penalties.

Disruptions in the supply of components from our single source suppliers could result in a significant reduction in sales and profitability.

We purchase uniquely configured components for our devices from single-source suppliers. We cannot assure you that a replacement supplier would be able to configure its components for our devices on a timely basis or, in the alternative, that we would be able to reconfigure our devices to integrate the replacement part. A reduction or stoppage in supply while a replacement supplier reconfigures its components, or while we reconfigure our components for the replacement part, would limit our ability to manufacture our devices, which could result in a significant reduction in sales and profitability. We cannot assure you that our inventories would be adequate to meet our production needs during any prolonged interruption

of supply.

Our intellectual property may not protect our products, and our products may infringe on the intellectual property rights of third parties.

We rely on a combination of patents, trade secrets and non-disclosure agreements to protect our intellectual property. Our success depends, in part, on our ability to obtain and maintain United States and foreign patent protection for our products, their uses and our processes to preserve our trade secrets and to operate without infringing on the proprietary rights of third parties. We have a number of pending patent applications, and we do not know whether any patents will issue from any of these applications. We do not know whether any of the claims in our issued patents or pending applications will provide us with any significant protection against competitive products or otherwise be commercially valuable. Legal standards regarding the validity of patents and the proper scope of their claims are still evolving, and there is no consistent law or policy regarding the valid breadth of claims. Additionally, there may be third party patents, patent applications and other intellectual property relevant to our products and technology which are not known to us and that block or compete with our products.

We face the risks that:

. third parties will infringe our intellectual property rights;

. our non-disclosure agreements will be breached;

. we will not have adequate remedies for infringement;

. our trade secrets will become known to or independently developed by our competitors; or

. any third parties will be issued patents that may prevent the sale of our products or require us to license and pay fees or royalties in order for us to be able to market some of our products.

We are currently engaged in litigation relating to the enforcement and defense of five of our patents. Additional litigation may be necessary to enforce patents issued to us, to protect our proprietary



rights, or to defend third party claims that we have infringed upon proprietary rights of others. The defense and prosecution of patent claims, including these pending claims, as well as participation in other inter-party proceedings, can be expensive and time consuming, even in those instances in which the outcome is favorable to us. If the outcome of any litigation or proceeding brought against us were adverse, we could be subject to significant liabilities to third parties, could be required to obtain licenses from third parties or could be required to cease sales of the affected products. Additionally, the laws regarding the enforceability of patents vary from country to country, and we cannot assure you that any patent issues we face will be uniformly resolved, or that local laws will provide us with consistent rights and benefits.

We are subject to product liability claims that may exceed the scope and amount of our insurance coverage, which would expose us to liability for uninsured claims.

We are subject to potential product liability claims as a result of the design, manufacture and marketing of medical devices. Any product liability claim brought against us, with or without merit, could result in the increase of our product liability insurance rates. In addition, we would have to pay any amount awarded by a court in excess of our policy limits. Our insurance policies have various exclusions, and thus we may be subject to a product liability claim for which we have no insurance coverage, in which case, we may have to pay the entire amount of any award. We cannot assure you that our insurance coverage will be adequate or that all claims brought against us will be covered by our insurance. Insurance varies in cost and can be difficult to obtain, and we cannot assure you that we will be able to obtain insurance in the future on terms acceptable to us or at all. A successful product liability claim brought against us in excess of our insurance coverage, if any, may require us to pay substantial amounts, which could harm our business.

Our business could suffer if we lose the services of key members of our management.

We are dependent upon the continued services of key members of our senior management and a limited number of key employees and consultants. The loss of the services of any one of these individuals could significantly disrupt our operations. Additionally, our future success will depend, among other factors, on our ability to continue to hire and retain the necessary qualified scientific, technical and managerial personnel. We

compete for such personnel with numerous other companies, academic institutions and organizations.

Our quarterly operating results are subject to fluctuation for a variety of reasons.

Our operating results have, from time to time, fluctuated on a quarterly basis and may be subject to similar fluctuations in the future. These fluctuations may result from a number of factors, including:

. the introduction of new products by us or our competitors;

. the geographic mix of product sales;

. the success of our marketing efforts in new regions;

. changes in third party reimbursement;

. timing of regulatory clearances and approvals;

. timing of orders by distributors;

. expenditures incurred for research and development;

. competitive pricing in different regions;

. seasonality;

. the cost and effect of promotional and marketing programs; and

. the effect of foreign currency transaction gains or losses.



We are subject to an ongoing tax audit, the results of which may require significant tax adjustments.

We are subject to an ongoing audit of our tax returns for the years 1995 through 1998, which began in February 1998. The IRS may disagree with our tax positions on such returns, and if challenged by the IRS, our tax positions may not be sustained by the courts. As a result of these audits, we may be required to make certain tax adjustments and pay additional taxes and fines that may be significant and have a negative impact on our result of operations.

If a natural or man made disaster strikes our manufacturing facilities, we will be unable to manufacture our products for a substantial amount of time and our sales will decline.

We manufacture a significant portion of our products in our facilities in Australia. These facilities and the manufacturing equipment we use to produce our products would be costly to replace and could require substantial lead time to repair or replace. The facilities may be affected by natural or man made disasters and in the event it was affected by a disaster, we would be forced to rely on third party manufacturers. Although we believe we possess adequate insurance for damage to our property and the disruption of our business from casualties, such insurance may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, or at all.

Delaware law, provisions in our charter and our shareholder rights plan could make the acquisition of our company by another company more difficult.

Provisions of our certificate of incorporation may have the effect of delaying or preventing changes in control or management which might be beneficial to us or our securityholders. In particular, our board of directors is divided into three classes, serving for staggered three-year terms. Because of this classification it will require at least two annual meetings to elect directors constituting a majority of our board of directors.

Additionally, our board of directors has the authority to issue up to 2,000,000 shares of preferred stock and to determine the price, rights, preferences, privileges and restrictions, including voting rights, of those shares without further vote or action by the stockholders. Under our stockholders rights plan, we have also issued purchase rights to the holders of our common stock that entitle those holders to purchase our Series A Junior Participating Preferred Stock at a discount, under certain circumstances. The rights of the holders of our common stock will be subject to, and may be adversely affected by, the rights of the holders of any preferred stock that may be issued in the future. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change in control, may discourage bids for our common stock at a premium over the market price of our common stock and may adversely affect the

market price of our common stock and the voting and other rights of the holders of our common stock.

You may not be able to enforce the judgments of U.S. courts against some of our assets or officers and directors.

A substantial portion of our assets are located outside the United States. Additionally, two of our six directors and three of our eight officers reside outside the United States, along with all or a substantial portion of the assets of these persons. As a result, it may not be possible for investors to enforce judgments of U.S. courts relating to any liabilities under U.S. securities laws against our assets, those persons or their assets. In addition, we have been advised by our Australian counsel



that some doubt exists as to the ability of investors to pursue claims based on U.S. securities laws against these assets or these persons in Australian courts.

The information contained in this section is not intended to be an exhaustive description of the risks and uncertainties inherent in our business or in our strategic plans. Please see Item 1 "Business" and Item 3 "Legal Proceedings".

Item 8 Consolidated Financial Statements and Supplementary Data

a) Index to Consolidated Financial Statements

<TABLE>
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</TABLE>

b) Supplementary Data

Quarterly Financial Information (unaudited)

The quarterly results for the years ended June 30, 2001 and 2000 are summarized below (in thousands, except per share amounts):

<TABLE>
<CAPTION>

| | 2001 | | | | |
|---|---|---|---|---|---|
| | First Quarter | Second Quarter | Third Quarter | Fourth Quarter | Fiscal Year |
| <S> | <C> | <C> | <C> | <C> | <C> |
| Net revenues | $31,082 | $34,366 | $ 42,680 | $47,028 | $155,156 |
| Gross profit | 21,087 | 23,021 | 28,923 | 31,748 | 104,779 |
| Net income (loss) | 6,580 | 6,898 | (10,194) | 8,346 | 11,630 |
| Basic earnings per share | $ 0.21 | $ 0.22 | ($0.33) | $ 0.27 | $ 0.37 |
| Diluted earnings per share | $ 0.20 | $ 0.21 | ($0.30) | $ 0.25 | $ 0.35 |

<CAPTION>

| | 2000 | | | | |
|---|---|---|---|---|---|
| | First Quarter | Second Quarter | Third Quarter | Fourth Quarter | Fiscal Year |
| <S> | <C> | <C> | <C> | <C> | <C> |
| Net revenues | $25,945 | $28,135 | $29,971 | $31,564 | $115,615 |
| Gross profit | 17,721 | 19,531 | 19,819 | 21,553 | 78,624 |
| Net income | 4,835 | 5,362 | 5,838 | 6,191 | 22,226 |
| Basic earnings per share | $ 0.16 | $ 0.18 | $ 0.19 | $ 0.20 | $ 0.74 |
| Diluted earnings per share | $ 0.15 | $ 0.17 | $ 0.18 | $ 0.19 | $ 0.69 |

</TABLE>

/(1)/ Per share amounts for each quarter are computed independently, and, due to the computation formula, the sum of the four quarters may not equal the year.

Item 9 Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.



## PART III

### Item 10 Directors and Executive Officers of the Registrant

Incorporated by reference to our definitive Proxy Statement for our November 5, 2001, meeting of stockholders, which will be filed with the Securities and Exchange Commission within 120 days after June 30, 2001.

### Item 11 Executive Compensation

Incorporated by reference to our definitive Proxy Statement for our November 5, 2001, meeting of stockholders, which will be filed with the Securities and Exchange Commission within 120 days after June 30, 2001.

### Item 12 Security Ownership of Certain Beneficial Owners and Management

Incorporated by reference to our definitive Proxy Statement for our November 5, 2001, meeting of stockholders, which will be filed with the Securities and Exchange Commission within 120 days after June 30, 2001.

### Item 13 Certain Relationships and Related Transactions

No material transactions.



## PART IV

### Item 14 Exhibits, Consolidated Financial Statements, Schedule, and Reports on Form 8-K

a) The following documents are filed as part of this report:

1. Consolidated Financial Statements and Schedule

   The consolidated financial statements and schedule of the Company and its consolidated subsidiaries are set forth in the "Index to Consolidated Financial Statements" under Item 8 of this report.

2. Exhibits

   2.1 Sale and Assignment Agreement, dated as of February 16, 2001 between ResMed Inc, ResMed Beteiligungs GmbH and the shareholders of MAP Medizin-Technologie GmbH*
   3.1 Certificate of Incorporation of Registrant, as amended**
   3.2 By-laws of Registrant**
   4.1 Form of certificate evidencing shares of Common Stock**
   4.2 Rights agreement dated as of April 23, 1997***
   4.3 Indenture dated as of June 20, 2001, between ResMed Inc and American Stock Transfer & Trust Company

   4.4 Registration Rights Agreement dated as of June 20, 2001, by and between ResMed Inc, Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Banc Alex Brown Inc., William Blair & Company, L.L.C., Macquarie Bank Limited and UBS Warburg LLC

   10.1 1995 Stock Option Plan**
   10.2 1997 Equity Participation Plan****
   10.3 Licensing Agreement between the University of Sydney and ResMed Limited dated May 17, 1991, as amended**
   10.4 Consulting Agreement between Colin Sullivan and ResMed Limited effective from 1 January 1998*****
   10.5 Loan Agreement between the Australian Trade Commission and ResMed Limited dated May 3, 1994**
   10.6 Lease for 10121 Carroll Canyon Road, San Diego CA 92131-1109, USA*****
   11.1 Computation of Earnings per Common Share
   21.1 Subsidiaries of the Registrant
   23.1 Independent Auditors' Consent and Report on Schedule

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* Incorporated by reference to the Registrant's Report on Form 8-K dated March 2, 2001

** Incorporated by reference to the Registrant's Registration Statement on Form S-1 (No. 33-91094) declared effective on June 1, 1995.

*** Incorporated by reference to the Registrant's Registration Statement on Form 8-A12G filed on April 25, 1997.

**** Incorporated by reference to the Registrant's 1997 Proxy

Statement (File No. 0-26038).
***** Incorporated by reference to the Registrant's Report on Form 10-K dated June 30, 1998 (File No. 0-26038)



b) Reports on Form 8-K

On May 1, 2001 we filed a report on Form 8-K/A reporting Pro Forma Condensed Consolidated Financial Information associated with the acquisition, on February 16, 2001, of MAP Medizin-Technologie GmbH.

On June 12, 2001 we filed a report on Form 8-K that announced our proposed private placement of $150 million of convertible subordinated notes and included a press release issued by us on June 11, 2001 to that same effect.

On June 15, 2001, we filed a report on Form 8-K that announced we had entered into a purchase agreement providing for the sale to certain initial purchasers of $150 million of convertible subordinated notes (plus an additional $30 million to cover over allotments, if any). The report included a press release issued by us on June 14, 2001 to that effect. The report also announced the specific pricing for the sale of the convertible subordinated notes and included a press release dated June 15, 2001, to that effect.



SIGNATURES

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.

DATED September 20, 2001

ResMed Inc

/S/ PETER C. FARRELL
---
Peter C. Farrell, President and Chief Executive Officer
President and Chief Executive Officer

/S/ ADRIAN M. SMITH
---
Adrian M. Smith
Vice President Finance and Chief Financial Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<TABLE>
<CAPTION>

| SIGNATURE | TITLE | DATE |
|---|---|---|
| <S> | <C> | <C> |
| /S/ PETER C. FARRELL<br>---<br>Peter C. Farrell | Chief Executive Officer,<br>President, Chairman of the Board<br>(Principal Executive Officer) | September 20, 2001 |
| /S/ CHRISTOPHER G. ROBERTS<br>---<br>Christopher G. Roberts | Director | September 20, 2001 |
| /S/ MICHAEL A. QUINN<br>---<br>Michael A. Quinn | Director | September 20, 2001 |
| /S/ GARY W. PACE<br>---<br>Gary W. Pace | Director | September 20, 2001 |
| /S/ DONAGH MCCARTHY | Director | September 20, 2001 |

---

Donagh McCarthy

/S/ CHRISTOPHER BARTLETT | Director | September 20, 2001

---

Christopher Bartlett

</TABLE>

Independent Auditors' Report

The Board of Directors and Stockholders
ResMed Inc:

We have audited the accompanying consolidated balance sheets of ResMed Inc and subsidiaries as of June 30, 2001, and 2000, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the years in the three-year period ended June 30, 2001. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of ResMed Inc. and subsidiaries as of June 30, 2001 and 2000, and the results of their operations and their cash flows for each of the years in the three-year period ended June 30, 2001, in conformity with accounting principles generally accepted in the United States of America.

/s/ KPMG LLP

KPMG LLP
San Diego, California
August 3, 2001



ResMed Inc And Subsidiaries
Consolidated Balance Sheets
June 30, 2001 and 2000
(In thousands, except share and per share data)

<TABLE>
<CAPTION>

| | June 30, 2001 | June 30, 2000 |
|---|---|---|
| <S> | <C> | <C> |
| Assets | | |
| Current assets: | | |
| Cash and cash equivalents | $ 40,136 | $ 18,250 |
| Marketable securities available for sale (note 3) | 62,616 | 3,713 |
| Accounts receivable, net of allowance for doubtful accounts of $892 and $833 at June 30, 2001 and 2000, respectively | 32,248 | 24,688 |
| Inventories, net (note 4) | 29,994 | 15,802 |
| Deferred income taxes (note 10) | 4,152 | 2,361 |
| Prepaid expenses and other current assets | 8,736 | 4,358 |
| Total current assets | 177,882 | 69,172 |
| Property, plant and equipment, net of accumulated depreciation of $19,930 at June 30, 2001 and $13,552 at June 30, 2000 (note 5) | 55,092 | 36,576 |
| Patents, net of accumulated amortization of $1,030 and $789 at June 30, 2001 and 2000, respectively | 1,390 | 1,342 |
| Goodwill, net of accumulated amortization of $3,193 and $2,003 at June 30, 2001 and 2000, respectively | 47,870 | 5,626 |
| Other assets | 5,856 | 2,878 |
| Total assets | $288,090 | $115,594 |

| | | |
|---|---|---|
| Liabilities and Stockholders' Equity | | |
| Current liabilities: | | |
| Accounts payable | $ 7,971 | $ 5,929 |
| Accrued expenses (note 6) | 16,751 | 9,224 |
| Income taxes payable | 8,888 | 6,469 |
| Total current liabilities | 33,610 | 21,622 |
| Non current liabilities: | | |
| Deferred revenue | 4,114 | - |
| Convertible subordinated notes (note 7) | 150,000 | - |
| Total non current liabilities | 154,114 | - |
| Total liabilities | 187,724 | 21,622 |
| Stockholders' equity: (note 8) | | |
| Preferred stock, $.01 par value, 2,000,000 shares authorized; none issued | - | - |
| Series A Junior Participating preferred stock, $0.01 par value, 250,000 shares authorized; none issued | - | - |
| Common stock, $.004 par value, 50,000,000 shares authorized; Issued and outstanding 31,478,780 at June 30, 2001 and 30,593,921 at June 30, 2000 | 126 | 122 |
| Additional paid-in capital | 52,675 | 41,495 |
| Retained earnings | 77,137 | 65,507 |
| Accumulated other comprehensive loss | (29,572) | (13,152) |
| Total stockholders' equity | 100,366 | 93,972 |
| Commitments and contingencies (notes 13 and 16) | - | - |
| Total liabilities and stockholders' equity | $288,090 | $115,594 |

</TABLE>

See accompanying notes to consolidated financial statements.



ResMed Inc and Subsidiaries
Consolidated Statements of Income
Years ended June 30, 2001, 2000 and 1999
(In thousands, except per share data)

<TABLE>
<CAPTION>

| | June 30, 2001 | June 30, 2000 | June 30, 1999 |
|---|---|---|---|
| <S> | <C> | <C> | <C> |
| Net revenues | $155,156 | $115,615 | $88,627 |
| Cost of sales | 50,377 | 36,991 | 29,416 |
| Gross profit | 104,779 | 78,624 | 59,211 |
| Operating expenses: | | | |
| Selling, general and administrative | 49,364 | 36,987 | 27,414 |
| Provision for restructure (note 6) | 550 | - | - |
| In-process research and development write off (note 14) | 17,677 | - | - |
| Research and development | 11,146 | 8,499 | 6,542 |
| Total operating expenses | 78,737 | 45,486 | 33,956 |

| | | | |
|---|---|---|---|
| Income from operations | 26,042 | 33,138 | 25,255 |
| Other income (expenses): | | | |
| Interest income (expense), net | (762) | 801 | 779 |
| Government grants | 72 | 279 | 833 |
| Other, net (note 9) | 1,962 | (52) | (2,290) |
| Total other income (expenses), net | 1,272 | 1,028 | (678) |
| Income before income taxes | 27,314 | 34,166 | 24,577 |
| Income taxes (note 10) | 15,684 | 11,940 | 8,475 |
| Net income | $ 11,630 | $ 22,226 | $16,102 |
| Basic earnings per share | $0.37 | $0.74 | $0.55 |
| Diluted earnings per share | $0.35 | $0.69 | $0.52 |
| Basic shares outstanding | 31,129 | 30,153 | 29,416 |
| Diluted shares outstanding | 33,484 | 32,303 | 31,068 |

See accompanying notes to consolidated financial statements.



ResMed Inc And Subsidiaries
Consolidated Statements of Stockholders' Equity
Years ended June 30, 2001, 2000 and 1999
(In thousands)

| | Common stock | | Additional paid-in | Retained | Accumulated other comprehensive | | Comprehensive |
|---|---|---|---|---|---|---|---|
| | Shares | Amount | capital | Earnings | income (loss) | Total | Income |
| Balance, June 30, 1998 | 29,104 | $117 | $31,165 | $27,179 | $ (7,688) | $ 50,773 | |
| Common stock issued on exercise of options (note 8) | 512 | 1 | 2,124 | - | - | 2,125 | |
| Tax benefit from exercise of options | - | - | 388 | - | - | 388 | |
| Comprehensive income: | | | | | | | |
| Net income | - | - | - | 16,102 | - | 16,102 | $ 16,102 |
| Other comprehensive income | | | | | | | |
| Foreign currency translation adjustments | | | | | 2,259 | 2,259 | 2,259 |
| Comprehensive income | | | | | | | $ 18,361 |
| Balance, June 30, 1999 | 29,616 | 118 | 33,677 | 43,281 | (5,429) | 71,647 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Common stock issued to consultants | 10 | - | 126 | - | - | 126 |
| Common stock issued on exercise of options (note 8) | 968 | 4 | 6,376 | - | - | 6,380 |
| Tax benefit from exercise of options | - | - | 1,316 | - | - | 1,316 |
| Comprehensive income: | | | | | | |
| Net income | - | - | - | 22,226 | - | 22,226 |
| $ 22,226 | | | | | | |
| Other comprehensive income | | | | | | |
| Foreign currency translation adjustments | | | | | (7,723) | (7,723) |
| (7,723) | | | | | | |
| Comprehensive income | | | | | | |
| $ 14,503 | | | | | | |
| Balance, June 30, 2000 | 30,594 | $122 | 41,495 | 65,507 | (13,152) | 93,972 |
| Common stock issued on exercise of options (note 8) | 885 | 4 | 7,939 | - | - | 7,943 |
| Tax benefit from exercise of options | - | - | 3,241 | - | - | 3,241 |
| Comprehensive income: | | | | | | |
| Net income | - | - | - | 11,630 | - | 11,630 |
| $ 11,630 | | | | | | |
| Other comprehensive income | | | | | | |
| Foreign currency translation adjustments | - | - | - | - | (16,420) | (16,420) |
| (16,420) | | | | | | |
| Comprehensive income/(loss) | | | | | | |
| $ (4,790) | | | | | | |
| Balance, June 30, 2001 | 31,479 | $126 | $52,675 | $77,137 | $(29,572) | $100,366 |

See accompanying notes to consolidated financial statements.



ResMed Inc And Subsidiaries
Consolidated Statements of Cash Flows
Years ended June 30, 2001, 2000 and 1999
(In thousands)

| | June 30, 2001 | June 30, 2000 | June 30, 1999 |
|---|---|---|---|
| Cash flows from operating activities: | | | |
| Net income | $ 11,630 | $ 22,226 | $ 16,102 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Depreciation and amortization | 7,015 | 6,248 | 3,973 |
| Goodwill amortization | 1,430 | 690 | 633 |
| Provision for service warranties | 174 | 184 | 240 |
| Deferred income taxes | (2,306) | 77 | 549 |
| Foreign currency options revaluation | 2,766 | 2,158 | 125 |
| Non cash consulting expenses | - | 126 | - |
| Restructuring provision | 550 | - | - |
| Purchased in-process research and development write off | 17,677 | - | - |
| Changes in operating assets and liabilities, net of effect of acquisitions: | | | |
| Accounts receivable, net | (5,531) | (7,394) | (5,516) |
| Inventories | (8,130) | (6,027) | |

| | | |
|---|---|---|
| (2,919) | | |
| Prepaid expenses and other current assets | (3,470) | (1,572) |
| (204) | | |
| Accounts payable and accrued expenses | 2,633 | 1,412 |
| 2,873 | | |
| Income taxes payable | 5,082 | 2,147 |
| 2,332 | | |
| Net cash provided by operating activities | 29,520 | 20,275 |
| 18,188 | | |
| Cash flows from investing activities: | | |
| Purchases of property, plant and equipment | (27,459) | (16,168) |
| (20,515) | | |
| Purchase of marketable securities - available for sale | (79,879) | (36,804) |
| (7,290) | | |
| Proceeds from sale of marketable securities - available for sale | 20,976 | 38,717 |
| 6,862 | | |
| Patent registration costs | (516) | (961) |
| (445) | | |
| Business acquisitions, net of cash acquired of $367 (note 14) | (55,070) | (576) |
| (2,024) | | |
| Purchases of investments | (2,602) | (2,732) |
| (1,529) | | |
| Net cash used in investing activities | (144,550) | (18,524) |
| (24,941) | | |
| Cash flows from financing activities: | | |
| Proceeds from issuance of common stock, net | 7,943 | 6,380 |
| 2,125 | | |
| Repayment of borrowings | (82,854) | - |
| (235) | | |
| Proceeds from borrowings, net of borrowing costs | 213,937 | - |
| - | | |
| Net cash provided by financing activities | 139,026 | 6,380 |
| 1,890 | | |
| Effect of exchange rate changes on cash | (2,110) | (989) |
| 445 | | |
| Net increase (decrease) in cash and cash equivalents | 21,886 | 7,142 |
| (4,418) | | |
| Cash and cash equivalents at beginning of the year | 18,250 | 11,108 |
| 15,526 | | |
| Cash and cash equivalents at end of the year | $ 40,136 | $ 18,250 |
| $ 11,108 | | |
| Supplemental disclosure of cash flow information: | | |
| Income taxes paid | $ 12,908 | $ 9,716 |
| $ 5,374 | | |
| Interest paid | 1,439 | - |
| - | | |
| Fair value of assets acquired in acquisition | $ 33,139 | $ 383 |
| - | | |
| Liabilities assumed | (24,821) | (36) |
| - | | |
| Goodwill on acquisition | 47,119 | 229 |
| 2,024 | | |
| Cash paid for acquisition | $ 55,437 | $ 576 |
| $ 2,024 | | |

</TABLE>

See accompanying notes to consolidated financial statements.

1. Organization and Basis of Presentation

ResMed Inc (the "Company") is a Delaware corporation formed in March 1994 as a holding company for ResMed Holdings Ltd (RHL), a company resident in Australia. The Company designs, manufactures and markets devices for the evaluation and treatment of sleep disordered breathing, primarily obstructive sleep apnea. The Company's corporate offices are based in San Diego, California with its principal manufacturing operation located in Australia. Other major distribution and sales sites are located in the United States, United Kingdom, France, Germany, Sweden and Singapore.

2. Summary of Significant Accounting Policies

(a) Basis of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany transactions and balances have been eliminated on consolidation.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management estimates and assumptions that affect amounts reported in the financial statements and accompanying notes. Actual results could differ from management's estimates.

(b) Revenue Recognition

Revenue on product sales is recorded at the time of shipment. Royalty revenue from license agreements is recorded when earned. Service revenue received in advance from service contracts is initially capitalized and progressively recognized as revenue over the life of the service contract. Revenue from sale of marketing or distribution rights is initially capitalized and progressively recognized as revenue over the life of the contract.

(c) Cash and Cash Equivalents

Cash equivalents including certificates of deposit, commercial paper and other highly liquid investments are stated at cost, which approximates market. Investments with original maturities of 90 days or less are considered to be cash equivalents for purposes of the consolidated statements of cash flows.

(d) Inventories

Inventories are stated at the lower of cost or market, determined principally by the first-in, first-out method.

(e) Property, Plant and Equipment

Property, plant and equipment is recorded at cost. Depreciation expense is computed using the straight-line method over the estimated useful lives of the assets, generally two to ten years. Straight-line and accelerated methods of depreciation are used for tax purposes. Maintenance and repairs are charged to expense as incurred.





2. Summary of Significant Accounting Policies (continued)

(f) Patents

The registration costs for new patents are capitalized and amortized over the estimated useful life of the patent, generally five years. In the event of a patent being superseded, the unamortized costs are written off immediately.

(g) Goodwill

Goodwill arising from business acquisitions has been amortized on a straight-line basis over periods ranging from three to 20 years. The Company carries goodwill at cost net of accumulated amortization. The Company reviews its goodwill carrying value when events indicate that

an impairment may have occurred in goodwill. If, based on the undiscounted cash flows, management determines goodwill is not recoverable, goodwill is written down to its discounted cash flow value and the amortization period is re-assessed.

Amortization expense of goodwill was $1,430,000, $690,000 and $633,000 for the years ended June 30, 2001, 2000 and 1999, respectively.

(h) Government Grants

Government grants revenue is recognized when earned. Grants have been obtained by the Company from the Australian Federal Government to support the continued development of the Company's proprietary positive airway pressure technology and to assist development of export markets. Grants have been recognized in the amount of $72,000, $279,000 and $833,000 for the years ended June 30, 2001, 2000 and 1999, respectively.

(i) Foreign Currency

The consolidated financial statements of the Company's non-U.S. subsidiaries are translated into U.S. dollars for financial reporting purposes. Assets and liabilities of non-U.S. subsidiaries whose functional currencies are other than the U.S. dollar are translated at year end exchange rates, and revenue and expense transactions are translated at average exchange rates for the year. Cumulative translation adjustments are recognized as part of comprehensive income, as described in Note 15, and are included in accumulated other comprehensive loss in the consolidated balance sheet until such time as the subsidiary is sold or substantially or completely liquidated. Gains and losses on transactions, denominated in other than the functional currency of the entity, are reflected in operations.

(j) Research and Development

All research and development costs are expensed in the period incurred.





2. Summary of Significant Accounting Policies (continued)

(k) Earnings Per Share

The weighted average shares used to calculate basic earnings per share were 31,129,000, 30,153,000, and 29,416,000 for the years ended June 30, 2001, 2000 and 1999, respectively. The difference between basic earnings per share and diluted earnings per share is attributable to the impact of outstanding stock options during the periods presented. Stock options had the effect of increasing the number of shares used in the calculation (by application of the treasury stock method) by 2,355,000, 2,150,000 and 1,652,000 for the years ended June 30, 2001, 2000 and 1999, respectively.

(l) Financial Instruments

The carrying value of financial instruments, such as of cash and cash equivalents, marketable securities - available for sale, accounts receivable, government grants receivable and accounts payable approximate their fair value because of their short term nature. The estimated fair value of the Company's long-term debt at June 30, 2001 approximates $147.9 million compared with the carrying value of $150.0 million. Foreign currency option contracts are marked to market and therefore reflect their fair value. The Company does not hold or issue financial instruments for trading purposes.

The fair value of financial instruments is defined as the amount at which the instrument could be exchanged in a current transaction between willing parties.

(m) Foreign Exchange Risk Management

The Company enters into various types of foreign exchange contracts in managing its foreign exchange risk, including derivative financial instruments encompassing forward exchange contracts and foreign currency options.

The purpose of the Company's foreign currency hedging activities is to protect the Company from adverse exchange rate fluctuations with respect to net cash movements resulting from the sales of products to foreign customers and Australian manufacturing activities. The Company

enters into foreign currency option contracts to hedge anticipated sales and manufacturing costs, principally denominated in Australian dollars and Euros. The terms of such foreign currency option contracts generally do not exceed three years.

Unrealized gains or losses are recognized as incurred in the consolidated balance sheets as either other assets or other liabilities and are recorded within other income, net on the Company's consolidated statements of income. Unrealized gains and losses on currency derivatives are determined based on dealer quoted prices.

The Company is exposed to credit-related losses in the event of non-performance by counterparties to financial instruments. The credit exposure of foreign exchange options at June 30, 2001 was $597,000, which represents the positive fair value of options held by the Company.

The Company held foreign currency option contracts with notional amounts totalling $223,752,000 and $171,530,000 at June 30, 2001 and 2000, respectively to hedge foreign currency items. These contracts mature at various dates prior to July 2002.





2. Summary of Significant Accounting Policies (continued)

(n) Income Taxes

The Company accounts for income taxes under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

(o) Marketable Securities

Management determines the appropriate classification of its investments in debt and equity securities at the time of purchase and re-evaluates such determination at each balance sheet date. Debt securities for which the Company does not have the intent or ability to hold to maturity are classified as available for sale. Securities available for sale are carried at fair value, with the unrealized gains and losses, net of tax, reported in accumulated other comprehensive income (loss).

At June 30, 2001 and 2000, the Company's investments in debt securities were classified on the accompanying consolidated balance sheet as marketable securities available for sale. These investments are diversified among high credit quality securities in accordance with the Company's investment policy.

The amortized cost of debt securities classified as available-for-sale is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization and interest are included in interest income. Realized gains and losses are included in other income or expense. The cost of securities sold is based on the specific identification method.

(p) Warranty

Estimated future warranty obligations related to certain products are provided by charges to operations in the period in which the related revenue is recognized.

(q) Impairment of Long-Lived Assets

The Company periodically evaluates the carrying value of long-lived assets to be held and used, including certain identifiable intangible assets, when events and circumstances indicate that the carrying amount of an asset may not be recovered. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceed the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair

value, less costs to sell.





3. Marketable Securities

The estimated fair value of marketable securities available for sale as of June 30, 2001 and 2000, was $62,616,000 and $3,713,000, respectively. The estimated fair value of each investment approximates the amortized cost, and therefore, there are no unrealized gains or losses as of June 30, 2001 or 2000.

Expected maturities may differ from contractual maturities because the issuers of the securities may have the right to prepay obligations without prepayment penalties.

4. Inventories

Inventories net, were comprised of the following as of June 30, 2001 and 2000 (in thousands):

| | 2001 | 2000 |
|---|---|---|
| Raw materials | $ 7,584 | $ 4,826 |
| Work in progress | 98 | 297 |
| Finished goods | 22,312 | 10,679 |
| | $29,994 | $15,802 |

5. Property, Plant and Equipment

Property, plant and equipment is comprised of the following as of June 30, 2001 and 2000 (in thousands):

| | 2001 | 2000 |
|---|---|---|
| Machinery and equipment | $ 10,930 | $ 8,024 |
| Computer equipment | 12,829 | 9,685 |
| Furniture and fixtures | 8,667 | 5,214 |
| Vehicles | 1,219 | 1,214 |
| Clinical, demonstration and rental equipment | 8,194 | 7,844 |
| Leasehold improvements | 663 | 552 |
| Land | 5,333 | 3,113 |
| Buildings | 27,187 | 9,837 |
| Construction in Process | - | 4,645 |
| | 75,022 | 50,128 |
| Accumulated depreciation and amortization | (19,930) | (13,552) |
| | $ 55,092 | $ 36,576 |





6. Accrued Expenses

Accrued expenses at June 30, 2001 and 2000 consist of the following (in thousands):

| | 2001 | 2000 |
|---|---|---|
| Service warranties | $ 739 | $ 601 |
| Consulting and professional fees | 809 | 324 |
| Royalties | 290 | 240 |
| Value added taxes due | 6,033 | 2,520 |
| Employee related costs | 4,687 | 3,087 |
| Deferred revenue | 1,388 | 1,341 |
| Clinical research | 75 | 178 |
| Provision for restructure(a) | 375 | - |
| Promotional programs | 1,198 | - |
| Other | 1,157 | 933 |
| | $16,751 | $9,224 |

(a) Subsequent to the purchase of MAP Medizin-Technologie GmbH, the Company has begun limited restructuring of MAP's activities and for the year ended June 30, 2001, has taken a charge of $550,000 associated with the sale and closure of MAP's unprofitable French operation. At June 30, 2001, the provision for restructure was $375,000 representing amounts to be paid on termination of employees and leases.

7. Long-Term Debt

Long-term debt at June 30, 2001 and 2000 consist of the following (in thousands):

| | 2001 | 2000 |
|---|---|---|
| 4% Convertible subordinate notes due 2006 | $150,000 | $ - |

On June 20, 2001 the Company issued $150.0 million of 4% convertible subordinated notes that are due to mature on June 20, 2006. On July 3, 2001, the Company received an additional $30.0 million in over allotments. This increased the total amount of convertible subordinated notes issued to $180.0 million.

The notes are convertible, at the option of the holder, at any time on or prior to maturity, into shares of common stock of ResMed Inc. The notes are convertible at a conversion price of $60.60 per share, which is equal to a conversion rate of 16.5017 shares per $1,000 principal amount of notes, subject to adjustment.

Interest is to be paid on the notes on June 20 and December 20 of each year, beginning December 20, 2001.

The Company may redeem some or all of the notes at any time before June 20, 2004 at a redemption price of $1,000 per $1,000 principal amount of notes, plus accrued and unpaid interest, if any, to the redemption date, if the closing price of our common stock has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day before the date of mailing of the provisional redemption notice. Upon any such provisional redemption, the Company will make an additional payment in cash equal to $166.67 per $1,000 principal amount of notes, less the amount of any interest actually paid on the notes before the provisional redemption date.





7. Long-Term Debt (continued)

The Company may also redeem some or all of the notes at any time on or after June 22, 2004, but prior to June 20, 2005, at a redemption price equal to 101.6% of the principal amount of notes redeemed, and at any time after June 19, 2005, at a redemption price of 100.8% of the principal amount of notes, plus in any case accrued and unpaid interest, if any, to the redemption date, if the closing price of the Company's common stock has exceeded 130% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day before the date of mailing of the optional redemption notice.

The notes are general unsecured obligations and are subordinated to all of the Company's existing and future senior indebtedness and will be effectively subordinated to all of the indebtedness and liabilities of the Company's subsidiaries. The indenture governing the notes will not limit the Company or its subsidiaries from incurring senior indebtedness or other indebtedness.

8. Stockholders' Equity

Stock Options - The Company has granted stock options to personnel,
---
including officers and directors in accordance with both the 1995 Option Plan and the 1997 Equity Participation Plan (collectively the "Plans"). These options have expiration dates of ten years from the date of grant and vest over three years. The Company granted these options with the exercise price equal to the market value as determined at the date of grant.

In August 1997 as part of the introduction of the 1997 Equity Participation Plan, the Company cancelled 43,880 options, being all non-issued options remaining under the 1995 Option Plan.

The following table summarizes option activity:

<TABLE>
<CAPTION>

| | 2001 | Weighted Average Exercise Price | 2000 | Weighted Average Exercise Price | 1999 | Weighted Average Exercise Price |
|---|---|---|---|---|---|---|
| <S> | <C> | <C> | <C> | <C> | <C> | <C> |
| Outstanding at beginning of year | 3,298,022 | $10.12 | 3,142,272 | $ 7.32 | $ 2,403,160 | $ 4.57 |
| Granted | 1,569,690 | 27.27 | 1,336,900 | 14.14 | 1,265,000 | 11.31 |
| Exercised | (884,859) | 8.98 | (967,985) | 6.59 | (512,688) | 4.15 |
| Forfeited | (130,035) | 17.78 | (213,165) | 10.04 | (13,200) | 11.32 |
| Outstanding at end of year | 3,852,818 | $17.14 | 3,298,022 | $10.12 | 3,142,272 | $ 7.32 |
| Price range of granted options | $ 24-$40 | | $ 13-$27 | | $ 10-$12 | |
| Options exercisable at end of year | 1,240,427 | $ 8.02 | 1,368,286 | $ 6.92 | 1,254,126 | $ 4.00 |

</TABLE>





8. Stockholders' Equity (continued)

The total number of shares of Common Stock authorized for issuance upon exercise of options and other awards, or upon vesting of restricted or deferred stock awards, under the 1997 Plan was initially established at 1,000,000 and increases at the beginning of each fiscal year, commencing on July 1, 1998, by an amount equal to 4% of the outstanding Common Stock on the last day of the preceding fiscal year. The maximum number of shares of Common Stock issuable upon exercise of incentive stock options granted under the 1997 Plan, however, cannot exceed 8,000,000. Furthermore, the maximum number of shares which may be subject to options, rights or other awards granted under the 1997 Plan to any individual in any calendar year cannot exceed 300,000.

The following table summarizes information about stock options outstanding at June 30, 2001.

<TABLE>
<CAPTION>

| Exercise Prices | Number Outstanding at June 30, 2001 | Weighted Average Remaining Contractual Life | Number Exercisable at June 30, 2001 |
|---|---|---|---|
| <S> | <C> | <C> | <C> |
| $ 0 - $10 | 735,578 | 5.35 | 732,244 |
| $11 - $20 | 1,577,049 | 7.64 | 489,510 |
| $21 - $30 | 1,178,901 | 9.42 | 18,673 |
| $31 - $40 | 347,290 | 9.75 | - |
| $41 - $50 | 14,000 | 9.58 | - |

</TABLE>

| | | | |
|---|---|---|---|
| | 3,852,818 | 7.96 | 1,240,427 |

</TABLE>

The Company applies APB Opinion No. 25 in accounting for its Plans and, accordingly, no compensation cost has been recognized for its stock options. Had the Company determined compensation cost based on the fair value at the grant date for its stock options under SFAS 123, the Company's net income would have been reduced to the pro forma amounts indicated below:

<TABLE>

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| <S> | <C> | <C> | <C> |
| Net income (in thousands): | | | |
| As reported | $11,630 | $22,226 | $16,102 |
| Pro forma | 2,859 | 17,511 | 12,951 |
| Basic earnings per common share: | | | |
| As reported | $ 0.37 | $ 0.74 | $ 0.55 |
| Pro forma | $ 0.09 | $ 0.58 | $ 0.44 |
| Diluted income per common and common equivalent share: | | | |
| As reported | $ 0.35 | $ 0.69 | $ 0.52 |
| Pro forma | $ 0.09 | $ 0.54 | $ 0.42 |

</TABLE>

The fair value of each stock option grant was estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions: weighted average risk-free interest rates of 5.75% for fiscal 2001, and 6.5% and 5.8% for fiscal 2000 and 1999, respectively; no dividend yield; expected lives of four years; and volatility of 61% for 2001 and 2000 and 55% for 1999.





8. Stockholders' Equity (continued)

Preferred Stock - In April 1997, the board of directors authorized 2,000,000 shares of $0.01 par value preferred stock. No such shares were issued or outstanding at June 30, 2001.

Stock Purchase Rights - In April 1997, the Company implemented a plan to protect stockholders' rights in the event of a proposed takeover of the Company. Under the plan, each share of the Company's outstanding common stock carries one right to purchase Series A Junior Participating Preferred Stock (the "Right"). The Right enables the holder, under certain circumstances, to purchase common stock of the Company or of the acquiring person at a substantially discounted price ten days after a person or group publicly announces it has acquired or has tendered an offer for 20% or more of the Company's outstanding common stock. The Rights are redeemable at $0.01 per Right and expire in 2007.

Common Stock - During fiscal 2000, the Board of Directors declared a two-for-one split of the Company's common stock, effective March 31, 2000. Stockholders' equity has been restated for all periods presented to give retroactive recognition to the stock split by reclassifying from additional paid-in capital to common stock, the par value of the additional shares as a result of the stock split.

9. Other, net

Other, net is comprised of the following at June 30, 2001, 2000 and 1999 (in

thousands):

<TABLE>

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| <S> | <C> | <C> | <C> |
| License fees | $ 125 | $ 167 | $ 58 |
| Gain/(loss) on foreign currency hedging position | (2,766) | (1,863) | 435 |
| Gain/(loss) on foreign currency transactions | 4,747 | 1,681 | (2,888) |
| Write back of investment | - | - | 300 |
| Other | (144) | (37) | (195) |
| | $ 1,962 | $ (52) | $(2,290) |

</TABLE>

In March 1998, the Company granted to a third party licenses to three of the Company's patents for a non-refundable payment of $1,250,000. The license agreement will allow the third party to manufacture and distribute certain products featuring the Company's patented technology in the U.S. homecare market. Additionally, the Company will earn royalties on products manufactured.

10. Income Taxes

Income before income taxes for the years ended June 30, 2001, 2000, and 1999, was taxed under the following jurisdictions (in thousands):

<TABLE>

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| <S> | <C> | <C> | <C> |
| U.S. | $ 3,482 | $ 4,644 | $ 4,043 |
| Non-U.S. | 23,832 | 29,522 | 20,534 |
| | $27,314 | $34,166 | $24,577 |

</TABLE>





10. Income Taxes (continued)

The provision for income taxes is presented below (in thousands):

<TABLE>
<CAPTION>

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| <S> | <C> | <C> | <C> |
| Current: | | | |
| Federal | $ 2,938 | $ 1,396 | $ 772 |
| State | 203 | 77 | 174 |

| | | | |
|---|---|---|---|
| Non-U.S. | 14,790 | 10,390 | 6,980 |
| | 17,931 | 11,863 | 7,926 |
| Deferred: | | | |
| Federal | (652) | 390 | 360 |
| State | 90 | 14 | (12) |
| Non-U.S. | (1,685) | (327) | 201 |
| | (2,247) | 77 | 549 |
| Provision for income taxes | $15,684 | $11,940 | $8,475 |

</TABLE>

The provision for income taxes differs from the amount of income tax determined by applying the applicable U.S. federal income tax rate of 34% to pretax income as a result of the following (in thousands):

<TABLE>
<CAPTION>

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| <S> | <C> | <C> | <C> |
| Computed 'expected' tax expense | $ 9,287 | $11,616 | $8,356 |
| Increase (decrease) in income taxes Resulting from: | | | |
| Non-deductible expenses | 460 | 715 | 302 |
| Research and development credit | (781) | (430) | (250) |
| Tax effect of intercompany dividends | (3,885) | (508) | 13 |
| Utilization of net operating loss carryforwards | (5) | (4) | - |
| Change in valuation allowance | 4,431 | 22 | 71 |
| Effect of non-U.S. tax rates | 4 | 714 | 455 |
| State income taxes | 356 | 235 | 131 |
| In-process research and development write-off | 6,010 | - | - |
| Provision for restructure | 187 | - | - |
| Other | (380) | (420) | (603) |
| | $15,684 | $11,940 | $8,475 |

</TABLE>

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities are comprised of the following at June 30, 2001 and 2000 (in thousands):

<TABLE>
<CAPTION>

| | 2001 | 2000 |
|---|---|---|
| <S> | <C> | <C> |
| Deferred tax assets: | | |
| Employee benefit obligations | $ 573 | $ 534 |
| Provision for service warranties | 203 | 203 |
| Provision for doubtful debts | 317 | 254 |
| Net operating loss carryforwards | 2,206 | 79 |
| Deferred foreign tax credits | 7,193 | 970 |
| Accrual for legal costs | 5 | 76 |
| Intercompany profit in inventories | 3,492 | 2,188 |
| Property, plant and equipment | 189 | 290 |
| Other accruals | 663 | 418 |
| | 14,925 | 5,012 |

| | | |
|---|---|---|
| Less valuation allowance | (5,592) | (86) |
| Deferred tax assets | $ 9,333 | $4,926 |

</TABLE>





10. Income Taxes (continued)

<TABLE>
<CAPTION>

| | 2001 | 2000 |
|---|---|---|
| <S> | <C> | <C> |
| Deferred tax liabilities: | | |
| Patents | $ (382) | (413) |
| Capitalized software | (495) | (453) |
| Unrealized gain on foreign currency options | (179) | (306) |
| Unrealized foreign exchange gains | - | (196) |
| Undistributed German income | (2,104) | (992) |
| Deferred tax deductible goodwill amortization | (1,698) | - |
| Other receivables | (197) | (168) |
| Other | (126) | (37) |
| Deferred tax liabilities | (5,181) | (2,565) |
| Net deferred tax asset | $ 4,152 | 2,361 |

</TABLE>

The valuation allowance at June 30, 2001, primarily relates to a provision for uncertainty as to the utilization of deferred foreign tax credits of $4,322,000 and net operating loss carryforwards of $1,046,000 relating to MAP. The net change in the valuation allowance was an increase of $5,506,000 for the year ended June 30, 2001, in comparison to an increase of $22,000 and an increase of $48,000, for the years ended June 30, 2000 and 1999, respectively. The measurement of deferred tax assets and liabilities at June 30 of each year, reflect foreign currency translation adjustments, changes in enacted tax rates and changes in temporary differences. Income taxes in 2001, 2000 and 1999 were reduced by $5,000, $4,000 and $0, respectively, through the utilization of net operating loss carryforwards.

At June 30, 2001, the net operating loss carryforwards relate to MAP, Singapore and Malaysia.

11. Employee Retirement Plans

The Company contributes to a number of employee retirement plans for the benefit of its employees. These plans are detailed as follows:

Australia - The Company contributes to defined contribution pension plans for each employee resident in Australia. All Australian employees after serving a qualifying period, are entitled to benefits on retirement, disability or death. Employees may contribute additional funds to the plans. The Company contributes to the plans at the rate of 8% of the salaries of all Australian employees. Total Company contributions to the plans for the years ended June 30, 2001, 2000, and 1999 were $814,000, $632,000 and $457,000, respectively.

United Kingdom - The Company contributes to a defined contribution plan for each permanent United Kingdom employee. All employees, after serving a three month qualifying period, are entitled to benefit on retirement, disability or death. Employees may contribute additional funds to the plan. The Company contributes to the plans at the rate of 3% of the salaries. Total Company contributions to the plan were $7,000, $8,000 and $8,000 in fiscal 2001, 2000, and 1999 respectively.





11. Employee Retirement Plans (continued)

United States - The Company sponsors a defined contribution pension plan

available to substantially all domestic employees. Company contributions to this plan are based on a percentage of employee contributions to a maximum of 3% of employee salaries. The cost of this plan to the Company was $158,000, $123,000 and $96,000 in fiscal 2001, 2000 and 1999 respectively.

12. Segment Information

The Company operates solely in the sleep disordered breathing sector of the respiratory medicine industry. The Company therefore believes that, given the single market focus of its operations and the inter dependence of its products that the Company operates as a single operating segment. The Company assesses performance and allocates resources on the basis of a single operating entity.

Financial information by geographic area for the years ended June 30, 2001, 2000 and 1999, is summarized below (in thousands):

<TABLE>
<CAPTION>

| | U.S.A | Germany | Australia | France | Rest of World | Total |
|---|---|---|---|---|---|---|
| <S> | <C> | <C> | <C> | <C> | <C> | <C> |
| 2001 | | | | | | |
| Revenue from external customers | $74,981 | 25,646 | 5,318 | 17,592 | 31,619 | $155,156 |
| Long lived assets | $30,475 | 3,063 | 25,130 | 555 | 1,725 | $ 60,948 |
| 2000 | | | | | | |
| Revenue from external customers | $58,419 | 14,317 | 4,444 | 11,949 | 26,486 | $115,615 |
| Long lived assets | $ 8,126 | 1,248 | 27,595 | 622 | 1,863 | $ 39,454 |
| 1999 | | | | | | |
| Revenue from external customers | $47,229 | 13,181 | 3,489 | 6,978 | 17,750 | $ 88,627 |
| Long lived assets | $ 2,525 | 816 | 26,611 | 400 | 1,429 | $ 31,781 |

</TABLE>





12. Segment Information (continued)

Net revenues from external customers is based on the location of the customer. Long-lived assets of geographic areas are those assets used in the Company's operations in each geographical area and excludes patents, deferred tax assets and goodwill.

13. Commitments

The Company leases buildings, motor vehicles and office equipment under operating leases. Rental charges for these items are expensed as incurred. At June 30, 2001 the Company had the following future minimum lease payments under non-cancelable operating leases (in thousands):

| Years | Operating Leases | Sub lease rental income | Total net minimum lease payments |
|---|---|---|---|
| 2002 | $1,720 | $ 330 | $ 1,390 |
| 2003 | 1,540 | 245 | 1,295 |

| | | | |
|---|---|---|---|
| 2004 | 1,179 | 251 | 928 |
| 2005 | 529 | 257 | 272 |
| 2006 | 439 | 130 | 309 |
| Thereafter | 468 | - | 468 |
| Total minimum lease payments | $5,875 | $ 1,213 | $ 4,662 |

Rent expenses under operating leases for the years ended June 30, 2001, 2000 and 1999 were approximately $1,087,000, $744,000 and $789,000, respectively.

14. Business Acquisition

On February 16, 2001 the Company's fully owned German Subsidiary, ResMed Beteiligungs GmbH, acquired all the common stock of MAP Medizin-Technologie GmbH ("MAP'') for total consideration, including acquisition costs, of $55.4 million.

The acquisition has been accounted for as a purchase and accordingly, the results of operations of MAP have been included in the Company's consolidated financial statements from February 16, 2001. The excess of the purchase price over the fair value of the net identifiable assets acquired of $47.1 million has been recorded as goodwill and is being amortized on a straight line basis over 20 years.

Purchased in-process research and development of $17,677,000 was expensed upon acquisition of MAP because technological feasibility of the products under development had not been established and no further alternative uses existed. The value of in process technology was calculated by identifying research projects in areas for which technological feasibility had not been established, estimating the costs to develop the purchased in process technology into commercially viable products, estimating the resulting net cash flows from such products, discounting the net cash flows to present value, and applying the reduced percentage completion of the projects thereto. The discount rates used in the analysis were between 27% and 33% and were based on the risk profile of the acquired assets.

All purchased research and development projects related to medical equipment for the treatment of sleep disordered breathing, primarily relating to the development of mask interface systems and autotitrating devices for the treatment of obstructive sleep apnea and associated disorders. Key assumptions used in the analysis included gross margins ranging from 70% to 80%. As of the date of acquisition, the mask interface systems are expected to be completed and commercially available in 2002 and versions of the autotitrating devices between 2003 and 2005. These projects have estimated costs to complete totalling approximately $2.0 million.





14. Business Acquisition (Continued)

The Company believes that the assumptions used to value the acquired intangible assets were reasonable at the time of acquisition. No assurance can be given, however, that the underlying assumptions used to estimate expected project revenues, development costs or profitability, or events associated with such projects, will transpire as estimated. For these reasons, among others, actual results may vary from the projected results.

The following unaudited pro-forma financial information presents the combined results of operations of the Company and MAP as if the acquisition had occurred as of the beginning of the years ended June 30, 2001 and 2000, respectively and after giving effect to certain adjustments, including amortization of goodwill and increased interest expense associated with debt funding the acquisition. The pro-forma financial information does not necessarily reflect the results of operations that would have occurred had the Company and MAP constituted a single entity during such years.

The pro-forma net income for the year ended June 30, 2001 excludes non-recurring acquisition charges of $17,677,000 for purchased in-process research and development and $550,000 for restructuring of MAP's French operations.

(In thousands except per share data)

| | 2001 | 2000 |
|---|---|---|
| Net revenue | $172,250 | $138,396 |
| Net income | 28,556 | 17,612 |

| | | |
|---|---|---|
| Basic earnings per share | $ 0.92 | $ 0.58 |
| Diluted earnings per share | $ 0.85 | $ 0.55 |
| | | |
| Basic shares outstanding | 31,129 | 30,153 |
| Diluted shares outstanding | 33,484 | 32,303 |

On January 31, 2000, the Company's wholly owned Swedish subsidiary, ResMed Sweden AB, acquired the business and associated assets of Einar Egnell AB, its Swedish distributor for $576,000 in cash. The acquisition has been accounted for as a purchase and accordingly, the results of operations of the Einar Egnell business have been included in the Company's consolidated financial statements from January 31, 2000. The excess of the purchase price over the fair value of the net identifiable assets acquired of $229,000 has been recorded as goodwill and is being amortized on a straight line basis over five years.

In fiscal 1999, the Company paid $2,024,000 as a final deferred goodwill payment on the 1996 acquisition of its German distributor.

15. Comprehensive Income

As of July 1, 1999, the Company adopted Statement of Financial Accounting Standards No. 130, 'Reporting Comprehensive Income' which established standards for the reporting and display of comprehensive income and its components in the financial statements. The only component of comprehensive income that impacts the Company is foreign currency translation adjustments. The net loss associated with foreign currency translation adjustments for the year ended June 30, 2001 was $16.4 million compared to a net loss of $7.7 million for the year ended June 30, 2000 and net gain of $2.3 million for the year ended June 30, 1999.





15. Comprehensive Income (Continued)

Comprehensive income/(loss) for the years ended June 30, 2001, June 30, 2000 and June 30, 1999 was ($4.8) million, $14.5 million and $18.4 million, respectively. The Company does not provide for U.S. income taxes on foreign currency translation adjustments since it does not provide for such taxes on undistributed earnings of foreign subsidiaries. Accumulated other comprehensive loss at June 30, 2001 and June 30, 2000 consisted of foreign currency translation adjustments and represent unrealized losses of $29.6 million and $13.2 million, respectively.

16. Legal Actions

The Company is currently engaged in litigation relating to the enforcement and defense of certain of its patents.

In January 1995, the Company filed a complaint in the United States District Court for the Southern District of California seeking monetary damages from and injunctive relief against Respironics for alleged infringement of three ResMed patents. In February 1995, Respironics filed a complaint in the United States District Court for the Western District of Pennsylvania against the Company seeking a declaratory judgment that Respironics does not infringe claims of these patents and that the Company's patents are invalid and unenforceable. The two actions were combined and are proceeding in the United States District Court for the Western District of Pennsylvania. In June 1996, the Company filed an additional complaint against Respironics for infringement of a fourth ResMed patent, and that complaint was consolidated with the earlier action. As of this date, Respironics has brought three partial summary judgment motions for non-infringement of the ResMed patents; the Court has granted each of the motions. In December 1999, in response to the Court's ruling on Respironics' third summary judgment motion, the parties jointly stipulated to a dismissal of charges of infringement under the fourth ResMed patent, with ResMed reserving the right to reassert the charges in the event of a favorable ruling on appeal. It is ResMed's intention to appeal the summary judgment rulings after a final judgment in the consolidated litigation has been entered in the District Court proceedings.

In January 2001, MAP Medizin-Technologie GmbH filed a lawsuit in the Civil Chamber of Munich Court against Hofrichter GmbH seeking actual and exemplary monetary damages for the unauthorized and infringing use of the Company's trademarks and patents. An initial decision has been made in favor of MAP. Hofrichter has filed an appeal and have sort Court determination that the MAP patents do not apply to certain Hofrichter products.

While the Company is prosecuting the above actions, there can be no assurance that the Company will be successful.

On March 31, 2001, we filed a lawsuit in the United States District Court for the Southern District of California against MPV Truma and Tiara Medical Systems, Inc., seeking actual and exemplary monetary damages and injunctive relief for the unauthorized and infringing use of our trademarks, trade dress, and patents related to our Mirage mask. The parties reached a confidential out of court settlement on April 9, 2001.

In May 1995, Respironics and its Australian distributor filed a Statement of Claim against us and Dr. Farrell in the Federal Court of Australia, alleging that we engaged in unfair trade practices. The statement of Claim asserted damage claims for lost profits on sales in the aggregate amount of approximately $1,000,000. The parties reached a confidential out of court settlement of this Action on April 16, 2001.



Schedule II

ResMed Inc and Subsidiaries
Valuation and Qualifying Accounts and Reserves
Years Ended June 30, 2001, 2000 and 1999
(in thousands)

<TABLE>
<CAPTION>

| | Balance at Beginning of Period | Charged to costs and expenses | Other (deductions) | Balance at end of period |
|---|---|---|---|---|
| <S> | <C> | <C> | <C> | <C> |
| Year ended June 30, 2001 | | | | |
| Applied against asset account Allowance for doubtful accounts | $833 | 681 | (622) | 892 |
| Year ended June 30, 2000 | | | | |
| Applied against asset account Allowance for doubtful accounts | $421 | 632 | (220) | 833 |
| Year ended June 30, 1999 | | | | |
| Applied against asset account Allowance for doubtful accounts | $248 | 348 | (175) | 421 |

</TABLE>

See accompanying independent auditor's report.

Exhibit Index

| | |
|---|---|
| 2.1 | Sale and Assignment Agreement dated as of February 16, 2001, between ResMed Inc, ResMed Beteilingungs GmbH and the shareholders of MAP Medizin-Technologie GmbH* |
| 3.1 | Certificate of Incorporation of Registrant, as amended** |
| 3.2 | By-laws of Registrant** |
| 4.1 | Form of certificate evidencing shares of Common Stock** |
| 4.2 | Rights agreement dated as of April 23, 1997*** |
| 4.3 | Indenture dated as of June 20, 2001, between ResMed Inc and American Stock Transfer & Trust Company |
| 4.4 | Registration Rights Agreement dated as of June 20, 2001, by and between ResMed Inc, Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Banc Alex Brown Inc., William Blair & Company, L.L.C., Macquarie Bank Limited and UBS Warburg LLC |
| 10.1 | 1995 Stock Option Plan** |
| 10.2 | 1997 Equity Participation Plan**** |
| 10.3 | Licensing Agreement between the University of Sydney and ResMed Limited dated May 17, 1991, as amended** |
| 10.4 | Consulting Agreement between Colin Sullivan and ResMed Limited effective from 1 January 1998***** |
| 10.5 | Loan Agreement between the Australian Trade Commission and ResMed Limited dated May 3, 1994** |
| 10.6 | Lease for 10121 Carroll Canyon Road, San Diego 92131-1109, U.S.A.***** |
| 11.1 | Computation of Earnings per Common Share |
| 21.1 | Subsidiaries of the Registrant |
| 23.1 | Independent Auditors' Consent and Report on Schedule |

---

* Incorporated by reference to the Registrant's Report on Form 8-K dated March 2, 2001

** Incorporated by reference to the Registrant's Registration Statement on

Form S-1 (No. 33-91094) declared effective June 1, 1995.

*** Incorporated by reference from the Registrants' Registration Statement on Form 8-A12G filed April 25, 1997.

**** Incorporated by reference from the Registrant's 1997 Proxy Statement (File No. 0-26038).

***** Incorporated by reference from the Registrant's Report on Form 10-K dated June 30, 1998 (File No. 0-26038)

Exhibit 4.3

EXECUTION COPY

RESMED INC.

4% Convertible Subordinated Notes
due 2006

---

INDENTURE

Dated as of June 20, 2001

---

AMERICAN STOCK TRANSFER &
TRUST COMPANY

TRUSTEE

---

CROSS REFERENCE TABLE*

| TIA Section | Indenture Section |
|---|---|
| 310(a)(1) | 7.09 |
| (a)(2) | 7.09 |
| (a)(3) | N.A. |
| (a)(4) | N.A. |
| (b) | 7.08; 7.10 |
| (c) | N.A. |
| 311(a) | 7.13 |
| (b) | 7.13 |
| (c) | N.A. |
| 312(a) | 2.05 |
| (b) | 12.03 |
| (c) | 12.03 |
| 313(a) | 7.14 |
| (b)(1) | N.A. |
| (b)(2) | 7.14 |
| (c) | 12.02 |
| (d) | 7.14 |
| 314(a) | 4.02; 4.03; 12.02 |
| (b) | N.A. |
| (c)(1) | 12.04 |
| (c)(2) | 12.04 |
| (c)(3) | N.A. |
| (d) | N.A. |
| (e) | 12.05 |
| (f) | N.A. |
| 315(a) | 7.01 |
| (b) | 7.15; 12.02 |
| (c) | 7.01 |
| (d) | 7.01 |
| (e) | 6.11 |
| 316(a) (last sentence) | 2.08 |
| (a)(1)(A) | 6.05 |
| (a)(1)(B) | 6.04 |
| (a)(2) | N.A. |
| (b) | 6.07 |
| 317(a)(1) | 6.08 |
| (a)(2) | 6.09 |
| (b) | 2.04 |
| 318(a) | 12.01 |

N.A. means Not Applicable.

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* Note: This Cross Reference Table shall not, for any purpose, be deemed to be part of the Indenture.

TABLE OF CONTENTS*

<TABLE>
<CAPTION>

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* Note: This Table of Contents shall not, for any purpose, be deemed to be part of the Indenture.



<TABLE>
<S> <C>

</TABLE>

</TABLE>



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<S> <C>


</TABLE>



ARTICLE 11
SUBORDINATION

<TABLE>
<S> <C>


</TABLE>

EXHIBITS
--------





INDENTURE dated as of June 20, 2001 between RESMED INC., a Delaware corporation (the "Company"), and AMERICAN STOCK TRANSFER & TRUST COMPANY, a New York corporation with trust powers, as Trustee hereunder (the "Trustee").

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of its 4% Convertible Subordinated Notes due 2006 (herein called the "Notes") of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Notes, when the Notes are executed by the Company and authenticated and delivered hereunder, the valid obligations of the Company, and to make this Indenture a valid agreement of the Company, in accordance with their and its terms, have been done. Further, all things necessary to duly authorize the issuance of the Common Stock of the Company issuable upon the conversion of the Notes, and to duly reserve for issuance the number of shares of Common Stock issuable upon such conversion, have been done.

This Indenture is subject to, and shall be governed by, the provisions of the Trust Indenture Act of 1939, as amended, that are required to be a part of and to govern indentures qualified under the Trust Indenture Act of 1939, as amended.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE 1

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.01 Definitions. For all purposes of this Indenture, except
-----------
as otherwise expressly provided or unless the context otherwise requires:

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

(2) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and

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

"Adjusted Interest Rate" means, with respect to any Reset Transaction,
 ----------------------
the rate per annum that is the arithmetic average of the rates quoted by two Reference Dealers selected



by the Company or its successor as the rate at which interest on the Notes should accrue so that the fair market value, expressed in dollars, of a Note immediately after the later of:

(1) the public announcement of such Reset Transaction, or

(2) the public announcement of a change in dividend policy in connection with such Reset Transaction

will equal the average Trading Price of a Note for the 20 Trading Days preceding the date of public announcement of such Reset Transaction; provided that the Adjusted Interest Rate shall not be less than 5% per annum.

"Affiliate" of any specified person means any other person directly or
 ---------
indirectly controlling or controlled by or under direct or indirect common control with such specified person. For purposes of this definition, "control"

when used with respect to any specified person means the power to direct or cause the direction of the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Applicable Procedures" means, with respect to any transfer or transaction involving a Global Note or beneficial interest therein, the rules and procedures of the Depositary for such Note, in each case to the extent applicable to such transaction and as in effect from time to time.

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

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

"Business Day" means each day of the year other than a Saturday or a Sunday on which banking institutions are not required or authorized to close in the City of New York.

"Capital Stock" of any corporation means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that corporation.

"Certificated Notes" means Notes that are in the form of the Notes attached hereto as Exhibit A-2.

"Closing Price" of any security on any date of determination means:

(1) the closing sale price (or, if no closing sale price is reported, the last reported sale price) of such security on the New York Stock Exchange on such date;



(2) if such security is not listed for trading on the New York Stock Exchange on any such date, the closing sale price as reported in the composite transactions for the principal U.S. securities exchange on which such security is so listed;

(3) if such security is not so listed on a U.S. national or regional securities exchange, the closing sale price as reported by the NASDAQ National Market;

(4) if such security is not so reported, the last quoted bid price for such security in the over-the-counter market as reported by the National Quotation Bureau or similar organization; or

(5) if such bid price is not available, the average of the mid-point of the last bid and ask prices of such security on such date from at least three nationally recognized independent investment banking firms retained for this purpose by the Company.

"Common Stock" means the Common Stock, par value $.004 per share, of the Company authorized at the date of this instrument as originally executed. Subject to the provisions of Section 10.11, shares issuable on conversion or repurchase of Notes shall include only shares of Common Stock or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; provided, however, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Notes shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"common stock" means any stock of any class of capital stock which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the issuer.

"Company" means the party named as the "Company" in the first

paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by any two Officers.

"Conversion Agent" means any person authorized by the Company to convert Notes in accordance with Article 10 hereof.

"Corporate Trust Office" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 59 Maiden Lane, New York, New York 10038, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as a successor Trustee may designate from time to time by notice to the Holders and the Company).



"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:

(1) all Senior Indebtedness under the Senior Loan Agreement; and

(2) any other Senior Indebtedness which, at the time of determination, has an aggregate principal amount outstanding of at least $20.0 million and that has been specifically designated in the instrument evidencing such Senior Indebtedness as "Designated Senior Indebtedness" of the Company.

"Dividend Yield" on any security for any period means the dividends paid or proposed to be paid pursuant to an announced dividend policy on such security for such period divided by, if with respect to dividends paid on such security, the average Closing Price of such security during such period and, if with respect to dividends proposed to be paid on such security, the Closing Price of such security on the effective date of the related Reset Transaction.

"Dollar" or "U.S.$" means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debts.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Global Notes" means Notes that are in the form of the Notes attached hereto as Exhibit A-1, and to the extent that such Notes are required to bear the Legend required by Section 2.06(f), such Notes will be in the form of a 144A Global Note or Regulation S Note.

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

"Holder" or "Noteholder" means a person in whose name a Note is registered on the Registrar's books.

"Indebtedness" means, with respect to any person, without duplication:

(1) all liabilities of such person for borrowed money (including overdrafts) or for the deferred purchase price of property or services, excluding any trade payables and other accrued current liabilities incurred in the ordinary course of business, but including, without limitation, all obligations, contingent or otherwise, of such person in connection with any letters of credit and acceptances issued under letter of credit facilities, acceptance facilities or other similar facilities;

(2) all obligations of such person evidenced by bonds, notes,

debentures or other similar instruments;



(3) indebtedness of such person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such person (even if the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), but excluding trade payables arising in the ordinary course of business;

(4) all capitalized lease obligations of such person;

(5) all obligations of such person under or in respect of interest rate agreements or currency agreements;

(6) all indebtedness referred to in (but not excluded from) the preceding clauses of other persons and all dividends of other persons, the payment of which is secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien or with respect to property (including, without limitation, accounts and contract rights) owned by such person, even though such person has not assumed or become liable for the payment of such indebtedness (the amount of such obligation being deemed to be the lesser of the value of such property or asset or the amount of the obligation so secured);

(7) all guarantees by such person of indebtedness referred to in this definition or of any other person;

(8) all Redeemable Capital Stock of such person valued at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued and unpaid dividends; and

(9) the present value of the obligation of such person as lessee for net rental payments (excluding all amounts required to be paid on account of maintenance and repairs, insurance, taxes, assessments, water, utilities and similar charges to the extent included in such rental payments) during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP.

"Indenture" means this Indenture, as amended or supplemented from time
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to time in accordance with the terms hereof, including the provisions of the TIA that are deemed to be a part hereof.

"Institutional Accredited Investor" means an institutional "accredited
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investor" as described in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"Interest Payment Date" means the Stated Maturity of an installment of
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interest on the Notes.



"Interest Rate" means (a) if a Reset Transaction has not occurred, 4%
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per annum, or (b) following the occurrence of a Reset Transaction, the Adjusted Interest Rate related to such Reset Transaction to, but not including the effective date of any succeeding Reset Transaction.

"Issue Date" of any Note means the date on which the Note was
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originally issued or deemed issued as set forth on the face of the Note.

"Lien" means, with respect to any asset, any mortgage, lien, pledge,
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charge, security interest or encumbrance of any kind in respect of such asset given to secure Indebtedness, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction with respect to any such lien, pledge, charge or security interest).

"Notes" has the meaning ascribed to it in the first paragraph under
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the caption "Recitals of the Company".

"Officer" means the Chairman of the Board, the Vice Chairman, the

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Chief Executive Officer, the President, any Executive Vice President, any Senior Vice President, any Vice President, the Treasurer or the Secretary or any Assistant Treasurer or Assistant Secretary of the Company.

"Officers' Certificate" means a written certificate containing the
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information specified in Sections 12.04 and 12.05, signed in the name of the Company by any two Officers, and delivered to the Trustee. An Officers' Certificate given pursuant to Section 4.03 shall be signed by one authorized financial or accounting Officer of the Company but need not contain the information specified in Sections 12.04 and 12.05.

"144A Global Note" means a permanent Global Note in the form of the
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Note attached hereto as Exhibit A-1, and that is deposited with and registered in the name of the Depositary, representing Notes sold in reliance on Rule 144A under the Securities Act.

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

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

"principal" of a Note means the principal amount due on the Stated
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Maturity as set forth on the face of the Note.

"Redeemable Capital Stock" means any class of the Company's Capital
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Stock that, either by its terms, by the terms of any securities into which it is convertible or exchangeable or by contract or otherwise, is, or upon the happening of an event or passage of time would be, required to be redeemed (whether by sinking fund or otherwise) prior to the date



that is 91 days after the final scheduled maturity of the Notes or is redeemable at the option of the Holder thereof at any time prior to such date, or is convertible into or exchangeable for debt securities at any time prior to such date (unless it is convertible or exchangeable solely at the Company's option).

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

"Redemption Price" or "redemption price" shall have the meaning set
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forth in paragraph 5 of the Notes.

"Reference Dealer" means a dealer engaged in the trading of
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convertible securities.

"Regular Record Date" means, with respect to the interest payable on
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any Interest Payment Date, the close of business on June 5 or December 5 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

"Regulation S" means Regulation S under the Securities Act or, if at
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any time after the execution of this Indenture such regulation is superceded or no longer in effect, then any rule, regulation or statutory provision of like intent successor thereto.

"Regulation S Note" means a permanent Global Note in the form attached
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hereto as Exhibit A-1, and that is deposited with and registered in the name of the Depositary, representing Notes sold in reliance on Rule 903 of Regulation S under the Securities Act.

"Reset Transaction" means a merger, consolidation or statutory share
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exchange to which the entity that is the issuer of the shares of common stock into which the Notes are then convertible into is a party; a sale of all or substantially all the assets of that entity; a recapitalization of those shares

of common stock; or a distribution described in Section 10.04(d) hereof; after the effective date of which transaction or distribution the Notes would be convertible into:

(1) shares of an entity the common stock of which had a Dividend Yield for the four fiscal quarters of such entity immediately preceding the public announcement of such transaction or distribution that was more than 2.5% higher than the Dividend Yield on the Common Stock (or other common stock then issuable upon conversion of the Notes) for the four fiscal quarters preceding the public announcement of such transaction or distribution; or

(2) shares of an entity that announces a dividend policy prior to the effective date of such transaction or distribution which policy, if implemented, would result in a Dividend Yield on such entity's common stock for the next four fiscal quarters that would result in such a 2.5% increase.

"Restriction Termination Date" means, with respect to any Note, the date that is two year after the later of:



(1) the Issue Date of the Note, or, in the case of Common Stock, the Issue Date of the Note upon the conversion of which such Common Stock was issued; and

(2) the last date on which the Company or any "affiliate," as defined in Rule 144 (or successor provision) under the Securities Act, of the Company was the owner of such Note or Common Stock.

"Responsible Officer" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee 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.

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

"Rule 144A" means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the United States Securities Act of 1933 (or any successor statute), as amended from time to time.

"Senior Loan Agreement" means the Amended and Restated Loan Agreement dated as of June 13, 2000, between the Company and Union Bank of California, N.A., providing for a revolving credit facility, as such agreement may be amended, renewed, extended, substituted, refinanced, restructured, replaced, supplemented or otherwise modified from time to time, including without limitation, any increase in the principal amount of debt thereunder.

"Senior Indebtedness" means:

(1) all obligations of the Company, now or hereafter existing, under or in respect of the Senior Loan Agreement and the document and instruments executed in connection therewith, whether for principal, premium, if any, interest (including interest accruing after the filing of, or which would have accrued but for the filing of, a petition by or against the Company under bankruptcy law, whether or not such interest is allowed as a claim after such filing in any proceeding under such law) and other amounts due in connection therewith (including, without limitation, any fees, premiums, expenses, reimbursement obligations with respect to letters of credit and indemnities), whether outstanding on the date of this Indenture or thereafter created, incurred or assumed; and

(2) the principal of, premium, if any, and interest on all other Indebtedness of the Company (other than the Notes), whether outstanding on the date of this Indenture or thereafter created, incurred or assumed, unless, in the case of any particular indebtedness, the instrument creating

or evidencing the same or pursuant to which the same is



outstanding expressly provides that such indebtedness shall not be senior in right of payment to the Notes.

Notwithstanding the foregoing, "Senior Indebtedness" shall not include:

(a) indebtedness evidenced by the Notes;

(b) indebtedness of the Company that by operation of law is subordinate to any general unsecured obligations of the Company;

(c) any liability for federal, state or local taxes or other taxes, owed or owing by the Company;

(d) accounts payable or other liabilities owed or owing by the Company to trade creditors (including guarantees thereof or instruments evidencing such liabilities);

(e) amounts owed by the Company for compensation to employees or for services rendered to the Company;

(f) indebtedness of the Company to any subsidiary or any other affiliate of the Company or any of such affiliate's subsidiaries;

(g) Capital Stock of the Company;

(h) indebtedness evidenced by any guarantee of any indebtedness ranking equal or junior in right of payment to the Notes; and

(i) indebtedness which, when incurred and without respect to any election under Section 1111(b) of Title 11 of the United States Code, is without recourse to the Company.

"Significant Subsidiary" means a Subsidiary of the Company, including its Subsidiaries, which meets any of the following conditions:

(1) the Company's and its other Subsidiaries' investments in and advances to the Subsidiary exceed 10 percent of the total assets of the Company and its Subsidiaries consolidated as of the end of any two of the three most recently completed fiscal years; or

(2) the Company's and its other Subsidiaries' proportionate share of the total assets of the Subsidiary exceeds 10 percent of the total assets of the Company and its Subsidiaries consolidated as of the end of any two of the three most recently completed fiscal years; or

(3) the Company's and its other Subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the Subsidiary exceeds 10 percent of such income of the Company and its Subsidiaries consolidated as of the end of any two of the three most recently completed fiscal years.



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

"Subsidiary" means (i) a corporation, a majority of whose Capital Stock with voting power, under ordinary circumstances, to elect directors is, at the date of determination, directly or indirectly owned by the Company, by one or more Subsidiaries of the Company or by the Company and one or more Subsidiaries of the Company, (ii) a partnership in which the Company or a Subsidiary of the Company holds a majority interest in the equity capital or profits of such partnership, or (iii) any other person (other than a corporation) in which the Company, a Subsidiary of the Company or the Company and one or more Subsidiaries of the Company, directly or indirectly, at the date of determination, has (x) at least a majority ownership interest or (y) the power to elect or direct the election of a majority of the directors or other governing body of such person.

"TIA" means the Trust Indenture Act of 1939 as in effect on the date of this Indenture, provided, however, that in the event the TIA is amended after such date, TIA means, to the extent required by any such amendment, the TIA as so amended.

"Trading Day" means a day during which trading in the Common Stock generally occurs on the New York Stock Exchange or, if the Common Stock is not listed on the New York Stock Exchange, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, on the National Association of Notes Dealers Automated Quotation System or, if the Common Stock is not quoted on the National Association of Securities Dealers Automated Quotation System, on the principal other market on which the Common Stock is then traded.

"Trading Price" of a security on any date of determination means:

(1) the closing sale price (or, if no closing sale price is reported, the last reported sale price) of such security (regular way) on the New York Stock Exchange on such date;

(2) if such security is not listed for trading on the New York Stock Exchange on any such date, the closing sale price as reported in the composite transactions for the principal U.S. securities exchange on which such security is so listed;

(3) if such security is not so listed on a U.S. national or regional securities exchange, the closing sale price as reported by the Nasdaq National Market;

(4) if such security is not so reported, the last price quoted by Interactive Data Corporation for such security or, if Interactive Data Corporation is not quoting such price, a similar quotation service selected by the Company;

(5) if such security is not so quoted, the average of the mid-point of the last bid and ask prices for such security from at least two dealers recognized as market-makers for such security; or



(6) if such security is not so quoted, the average of the last bid and ask prices for such security from the Reference Dealer.

"Trustee" means the party named as the "Trustee" in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

"United States" means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (its "possessions" including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands).

SECTION 1.02 Other Definitions.

<TABLE>
<CAPTION>

| Term | Defined in Section |
|---|---|
| <S> | <C> |
| "Act" | 1.05(a) |
| "Agent Members" | 2.12(f) |
| "Bankruptcy Law" | 6.01 |
| "Change in Control" | 3.10(a) |
| "Change in Control Repurchase Date" | 3.10(a) |
| "Change in Control Repurchase Notice" | 3.10(d) |
| "Change in Control Repurchase Price" | 3.10(a) |
| "Conversion Price" | 10.01 |
| "Current Market Price" | 10.04(g) |
| "Custodian" | 6.01 |
| "Depositary" | 2.01(a) |
| "DTC" | 2.01(a) |
| "Event of Default" | 6.01 |
| "Exchange Act" | 3.10(a) |
| "excluded securities" | 10.04(d) |
| "Expiration Time" | 10.04(f) |
| "fair market value" | 10.04(g) |
| "Institutional Accredited Investors" | 2.01(b) |
| "Legal Holiday" | 12.08 |
| "Legend" | 2.06(f) |

<TABLE>
<S> <C>
"Non-Electing Share"..... 10.11
"Non-Payment Default"..... 11.03(b)
"Notice of Default"..... 6.01
"Paying Agent"..... 2.03
"Payment Blockage Period"..... 11.03(b)
"Payment Default"..... 11.03(a)
"Purchased Shares"..... 10.04(f)
"Permitted Junior Securities"..... 11.02
"QIB"..... 2.01(a)
</TABLE>



<TABLE>
<S> <C>
"Record Date"..... 10.04(g)
"Reference Period"..... 10.04(d)
"Registrar"..... 2.03
"Rule 144A Information"..... 4.06
"Trigger Event"..... 10.04(d)
</TABLE>

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 Notes" means the Notes.

"indenture Note holder" means a Noteholder.

"indenture to be qualified" means this Indenture.

"indenture trustee" or "institutional trustee" means the Trustee.

"obligor" on the indenture Notes means the Company.

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

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

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

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles as in effect from time to time;

(c) "or" is not exclusive;

(d) "including" means including, without limitation; and

(e) words in the singular include the plural, and words in the plural include the singular.

SECTION 1.05 Acts of Holders. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by their agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required,



to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to such officer the execution thereof.

Where such execution is by a signer acting in a capacity other than such signer's individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer's authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

The ownership of Notes shall be proved by the register for the Notes or by a certificate of the Registrar.

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

If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a resolution of the Board of Directors, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for purposes of determining whether Holders of the requisite proportion of outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Notes shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

## ARTICLE 2

## THE NOTES

SECTION 2.01 Form and Dating. The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the form annexed hereto as Exhibits A-1 and A-2, which are incorporated in and made a part of this Indenture. The terms



and provisions contained in the form of Note shall constitute, and are hereby expressly made, a part of this Indenture and to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends and endorsements as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the notes may be listed or designated for issuance, or to conform to usage.

(a) Global Notes. Notes offered and sold within the United States to qualified institutional investors as defined in Rule 144A ("QIBs") in reliance on Rule 144A shall be issued, initially in the form of a 144A Global Note, which shall be deposited with the Trustee at its Corporate Trust Office, as custodian for, and registered in the name of, The Depository Trust Company ("DTC") or the nominee thereof (such depositary, or any successor thereto, and any such nominee being hereinafter referred to as the "Depositary"), duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary as hereinafter provided.

Notes offered and sold outside the United States in compliance with Regulation S under the Securities Act shall be issued initially in the form of one or more permanent global Notes in definitive fully registered form (the "Regulation S Global Note," and together with the 144A Global Note, the "Global Notes"), duly executed by the Company and authenticated by the Trustee as hereinafter provided. Such Regulation S Global Notes shall be registered in the name of the Depositary and deposited with the Trustee at its Corporate Trust Office, as custodian for the Depositary, for credit to the respective accounts at the Depositary of the depositories for Morgan Guaranty Trust Company of New York, Brussels office, as operator of the Euroclear Clearance System ("Euroclear") or for Clearstream Banking ("Clearstream"), societe anonyme, in

turn for credit to the respective accounts of beneficial owners of the Notes represented thereby in accordance with the rules thereof. The aggregate principal amount of the Regulation S Global Note may from time to time be increased or decreased by adjustments made on the records of the Note Registrar and the Depositary as hereinafter provided.

(b) Global Notes in General. Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions and conversions.

Any adjustment of the aggregate principal amount of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.12 hereof and shall be made on the records of the Trustee and the Depositary.



(c) Book-Entry Provisions. This Section 2.01(c) shall apply only to Global Notes deposited with or on behalf of the Depositary.

The Company shall execute and the Trustee shall, in accordance with this Section 2.01(c), authenticate and deliver initially one or more Global Notes that (a) shall be registered in the name of the Depositary, (b) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions and (c) shall bear legends substantially to the following effect:

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

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

(d) Restrictive Legends. Until the Restriction Termination Date, all Global Notes and all Certificated Notes shall bear the Legend, unless such Notes have been transferred pursuant to a registration statement that has been declared effective under the Securities Act. Until the Restriction Termination Date, the Company covenants that any stock certificate representing shares of Common Stock delivered by the Company upon conversion of any Notes will bear the Legend, unless such shares have been sold pursuant to a registration statement that has been declared effective under the Securities Act.

(e) Certificated Notes. Notes not issued as interests in the Global Notes will be issued in certificated form substantially in the form of Exhibit A-2 attached hereto.

SECTION 2.02 Execution and Authentication. The Notes shall be executed on behalf of the Company by any Officer, under its corporate seal reproduced thereon. The signature of the Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at the time of the execution of the Notes the proper Officers of the Company shall bind the Company,



notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of authentication of such Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized officer, and such certificate upon any Note shall be conclusive evidence, and the only evidence,

that such Note has been duly authenticated and delivered hereunder.

The Trustee shall authenticate and deliver Notes for original issue in an aggregate principal amount of up to $180,000,000 upon a Company Order without any further action by the Company. The aggregate principal amount of Notes outstanding at any time may not exceed the amount set forth in the foregoing sentence, except as provided in Section 2.07.

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

SECTION 2.03 Registrar, Paying Agent and Conversion Agent. The Company shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("Registrar"), an office or agency where Notes may be presented for purchase or payment ("Paying Agent") and an office or agency where Notes may be presented for conversion ("Conversion Agent"). The Registrar shall keep a register of the Notes and of their transfer and exchange. The Company may have one or more co-registrars, one or more additional paying agents and one or more additional conversion agents. The term Paying Agent includes any additional paying agent, including any named pursuant to Section 4.05. The term Conversion Agent includes any additional conversion agent, including any named pursuant to Section 4.05.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent, Conversion Agent or co-registrar (other than the Trustee). 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. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06. The Company or any Subsidiary or an Affiliate of either of them may act as Paying Agent, Registrar, Conversion Agent or co-registrar.

The Company initially appoints the Trustee as Registrar, Conversion Agent and Paying Agent in connection with the Notes.

SECTION 2.04 Paying Agent to Hold Money and Notes in Trust. Except as otherwise provided herein, on or prior to each due date of payments in respect of any Note, the Company shall deposit with the Paying Agent a sum of money (in immediately available funds if deposited on the due date) or Common Stock sufficient to make such payments when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Noteholders or the Trustee



all money and Common Stock held by the Paying Agent for the making of payments in respect of the Notes and shall notify the Trustee of any default by the Company in making any such payment. At any time during the continuance of any such default, the Paying Agent shall, upon the written request of the Trustee, forthwith pay to the Trustee all money and Common Stock so held in trust. If the Company, a Subsidiary or an Affiliate of either of them acts as Paying Agent, it shall segregate the money and Common Stock held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money and Common Stock held by it to the Trustee and to account for any funds and Common Stock disbursed by it. Upon doing so, the Paying Agent shall have no further liability for the money or Common Stock.

SECTION 2.05 Noteholder 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 Noteholders. If the Trustee is not the Registrar, the Company shall cause to be furnished to the Trustee at least semiannually on June 18 and December 18 a listing of Noteholders dated within 13 days of the date on which the list is furnished and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Noteholders.

SECTION 2.06 Transfer and Exchange. Subject to Section 2.12 hereof, (a) upon surrender for registration of transfer of any Note, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Noteholder or such Noteholder's attorney duly authorized in writing, at the office or agency of the company designated as Registrar or co-registrar pursuant to Section 2.03, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination or denominations, of a like aggregate principal amount. The Company shall not charge a service charge for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of the Notes from the Noteholder requesting such transfer or exchange.

At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations, of a like aggregate principal amount, upon surrender of the Notes to be exchanged, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Noteholder or such Noteholder's attorney duly authorized in writing, at such office or agency. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive.

The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of Notes selected for redemption (except, in the case of Notes to be redeemed in part, the portion thereof not to be redeemed) or any Notes in respect of which a Change in Control Repurchase Notice (as defined in Section 3.10(d)) has been given and not withdrawn by the Holder thereof in accordance with the terms of this Indenture (except, in the case of Notes to be purchased in part, the portion thereof not to be purchased) or any Notes for a period of 15 days before the mailing of a notice of redemption of Notes to be redeemed.



(b) Notwithstanding any provision to the contrary herein, so long as a Global Note remains outstanding and is held by or on behalf of the Depositary, transfers of a Global Note, in whole or in part, shall be made only in accordance with Section 2.12 and this Section 2.06(b). Transfers of a Global Note shall be limited to transfers of such Global Note in whole, or in part, to nominees of the Depositary or to a successor of the Depositary or such successor's nominee.

(c) Successive registrations and registrations of transfers and exchanges as aforesaid may be made from time to time as desired, and each such registration shall be noted on the register for the Notes.

(d) Any Registrar appointed pursuant to Section 2.03 hereof shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Notes upon transfer or exchange of Notes.

(e) No Registrar shall be required to make registrations of transfer or exchange of Notes during any periods designated in the text of the Notes or in this Indenture as periods during which such registration of transfers and exchanges need not be made.

(f) If Notes are issued upon the transfer, exchange or replacement of Notes subject to restrictions on transfer and bearing the legends set forth on the form of Note attached hereto as Exhibits A-1 and A-2 setting forth such restrictions (collectively, the "Legend"), or if a request is made to remove the Legend on a Note, the Notes so issued shall bear the Legend, or the Legend shall not be removed, as the case may be, unless there is delivered to the Company and the Registrar such satisfactory evidence, which shall include an Opinion of Counsel, as may be reasonably required by the Company and the Registrar, that neither the Legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Rule 144 or Regulation S under the Securities Act or that such Notes are not "restricted" within the meaning of Rule 144 under the Securities Act. Upon (i) provision of such satisfactory evidence, or (ii) notification by the Company to the Trustee and Registrar of the sale of such Note pursuant to a registration statement that is effective at the time of such sale, the Trustee, at the written direction of the Company, shall authenticate and deliver a Note that does not bear the Legend. If the Legend is removed from the face of a Note and the Note is subsequently held by an Affiliate of the Company, the Legend shall be reinstated.

SECTION 2.07 Replacement Notes. If (a) any mutilated Note is surrendered to the Trustee, or (b) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and there is delivered to the Company and the Trustee such Note or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Note has been acquired by a bona fide purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, or is about to be purchased by the Company pursuant to Article 3



hereof, the Company in its discretion may, instead of issuing a new Note, pay or purchase such Note, as the case may be.

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

Every new Note issued pursuant to this Section 2.07 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.07 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

SECTION 2.08 Outstanding Notes; Determinations of Holders' Action.

Notes outstanding at any time are all the Notes authenticated by the Trustee except for those cancelled by it or delivered to it for cancellation, those paid pursuant to Section 2.07 and those described in this Section 2.08 as not outstanding. A Note does not cease to be outstanding because the Company or an Affiliate thereof holds the Note; provided, however, that in determining whether the Holders of the requisite principal amount of the outstanding Notes have given or concurred in any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Responsible Officer of the Trustee knows to be so owned shall be so disregarded. Subject to the foregoing, only Notes outstanding at the time of such determination shall be considered in any such determination (including, without limitation, determinations pursuant to Articles 6 and 9).

If a Note is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the Paying Agent holds, in accordance with this Indenture, on a Redemption Date, or on the Business Day following the Change in Control Repurchase Date, or on Stated Maturity, money or securities, if permitted hereunder, sufficient to pay Notes payable on that date, then immediately after such Redemption Date, Change in Control Repurchase Date or Stated Maturity, as the case may be, such Notes shall cease to be outstanding and interest on such Notes shall cease to accrue; provided that, if such Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made.



If a Note is converted in accordance with Article 10, then from and after the time of conversion on the conversion date, such Note shall cease to be outstanding and interest shall cease to accrue on such Note.

SECTION 2.09 Temporary Notes. Pending the preparation of definitive

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

If temporary Notes are issued, the Company will cause definitive Notes to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes shall be exchangeable for definitive Notes upon surrender of the temporary Notes at the office or agency of the Company designated for such purpose pursuant to Section 2.03, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Notes of authorized denominations. Until so exchanged the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as definitive Notes.

SECTION 2.10 Cancellation. All Notes surrendered for payment, purchase

by the Company pursuant to Article 3, conversion, redemption or registration of transfer or exchange shall, if surrendered to any person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly cancelled by the Trustee. The Company may not issue new Notes to replace Notes it has paid or

delivered to the Trustee for cancellation or that any Holder has converted pursuant to Article 10. No Notes shall be authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section 2.10, except as expressly permitted by this Indenture. All cancelled Notes held by the Trustee shall be destroyed by the Trustee and the Trustee shall deliver a certificate of destruction to the Company.

SECTION 2.11 Persons Deemed Owners. Prior to due presentment of a Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Note is registered as the owner of such Note for the purpose of receiving payment of principal of the Note or the payment of any Redemption Price or Change in Control Repurchase Price in respect thereof, and interest thereon, for the purpose of conversion and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 2.12 Global Notes. (a) Notwithstanding any other provisions of this Indenture or the Notes, (A) transfers of a Global Note, in whole or in part, shall be made only in accordance with Section 2.06 and Section 2.12(a)(i), (B) transfer of a beneficial interest



in a Global Note for a Certificated Note shall comply with Section 2.06 and Section 2.12(a)(ii) below, and (C) transfers of a Certificated Note shall comply with Section 2.06 and Section 2.12(a)(iii) and (iv) below.

(i) Transfer of Global Note. A Global Note may not be transferred, in whole or in part, to any Person other than the Depositary or a nominee or any successor thereof, and no such transfer to any such other Person may be registered; provided that this clause (i) shall not prohibit any transfer of a Note that is issued in exchange for a Global Note but is not itself a Global Note. No transfer of a Note to any Person shall be effective under this Indenture or the Notes unless and until such Note has been registered in the name of such Person. Nothing in this Section 2.12(a)(i) shall prohibit or render ineffective any transfer of a beneficial interest in a Global Note effected in accordance with the other provisions of this Section 2.12(a).

(ii) Restrictions on Transfer of a Beneficial Interest in a Global Note for a Certificated Note. A beneficial interest in a Global Note may not be exchanged for a Certificated Note except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a transfer of a beneficial interest in a Global Note in accordance with Applicable Procedures for a Certificated Note in the form satisfactory to the Trustee, together with:

(a) so long as the Notes are Restricted Notes, certification, in the form set forth in Exhibit B-1, and, if requested by the Company or the Registrar, certification in the form set forth in Exhibit B-2 or Exhibit B-3, that such beneficial interest in the Global Note is being transferred to an Institutional Accredited Investor or a non-"U.S. person" within the meaning of Regulation S;

(b) written instructions to the Trustee to make, or direct the Registrar to make, an adjustment on its books and records with respect to such Global Note to reflect a decrease in the aggregate principal amount of the Notes represented by the Global Note, such instructions to contain information regarding the Depositary account to be credited with such decrease; and

(c) if the Company or Registrar so requests, an opinion of counsel or other evidence reasonably satisfactory to them as to the compliance with the restrictions set forth in the Legend,

then the Trustee shall cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Registrar, the aggregate principal amount of Notes represented by the Global Note to be decreased by the aggregate principal amount of the Certificated Note to be issued, shall issue such Certificated Note and shall debit or cause to be debited to the account of the Person specified in such instructions a beneficial interest in the Global Note equal to the principal amount of the Certificated Note so issued.

(iii) Transfer and Exchange of Certificated Notes. When Certificated Notes are presented to the Registrar with a request:



(x) to register the transfer of such Certificated Notes; or

(y) to exchange such Certificated Notes for an equal principal

amount of Certificated Notes of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Certificated Notes surrendered for transfer or exchange:

(a) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing; and

(b) so long as such Notes are Restricted Notes, such Notes are being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to clause (A), (B) or (C) below, and are accompanied by the following additional information and documents, as applicable:

(A) if such Certificated Notes are being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect; or

(B) if such Certificated Notes are being transferred to the Company, a certification to that effect; or

(C) if such Certificated Notes are being transferred pursuant to an exemption from registration, (i) a certification to that effect (in the form set forth in Exhibits B-1, and B-2 or B-3, if applicable) and (ii) if the Company or Registrar so requests, an opinion of counsel or other evidence reasonably satisfactory to them as to the compliance with the restrictions set forth in the Legend.

(iv) Restrictions on Transfer of a Certificated Note for a Beneficial Interest in a Global Note. A Certificated Note may not be exchanged for a beneficial interest in a Global Note except upon satisfaction of the requirements set forth below.

Upon receipt by the Trustee of a Certificated Note, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee, together with:

(a) so long as the Notes are Restricted Notes, certification, in the form set forth in Exhibit B-1, that such Certificated Note is being transferred to a Qualified Institutional Buyer in accordance with Rule 144A or pursuant to an offshore transaction in accordance with Rule 904 of Regulation S; and

(b) written instructions directing the Trustee to make, or to direct the Registrar to make, an adjustment on its books and records with respect to such Global Note to reflect an increase in the aggregate principal amount of the Notes represented by the Global Note, such instructions to contain information



regarding the Depositary account to be credited with such increase, then the Trustee shall cancel such Certificated Note and cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Registrar, the aggregate principal amount of Notes represented by the Global Note to be increased by the aggregate principal amount of the Certificated Note to be exchanged, and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Note equal to the principal amount of the Certificated Note so cancelled. If no Global Notes are then outstanding, the Company shall issue and the Trustee shall authenticate, upon written order of the Company in the form of an Officers' Certificate, a new Global Note in the appropriate principal amount.

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

(d) The restrictions imposed by the Legend upon the transferability of any Note shall cease and terminate when such Note has been sold pursuant to an effective registration statement under the Securities Act or transferred in

compliance with Rule 144 under the Securities Act (or any successor provision thereto) or, if earlier, upon the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision). Any Note as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon a surrender of such Note for exchange to the Registrar in accordance with the provisions of this Section 2.12 (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144 or any successor provision, by an opinion of counsel having substantial experience in practice under the Securities Act and otherwise reasonably acceptable to the Company, addressed to the Company and in form acceptable to the Company, to the effect that the transfer of such Note has been made in compliance with Rule 144 or such successor provision), be exchanged for a new Note, of like tenor and aggregate principal amount, which shall not bear the restrictive Legend. The Company shall inform the Trustee of the effective date of any registration statement registering the Notes under the Securities Act. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned opinion of counsel or registration statement.

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

(f) The provisions of clauses (1), (2), (3) and (4) below shall apply only to Global Notes:



(1) Notwithstanding any other provisions of this Indenture or the Notes, except as provided in Section 2.12(a)(ii), a Global Note shall not be exchanged in whole or in part for a Note registered in the name of any Person other than the Depositary or one or more nominees thereof, provided that a Global Note may be exchanged for Notes registered in the names of any person designated by the Depositary in the event that (i) the Depositary has notified the Company that it is unwilling or unable to continue as Depositary for such Global Note or such Depositary has ceased to be a "clearing agency" registered under the Exchange Act, and a successor Depositary is not appointed by the Company within 90 days or (ii) an Event of Default has occurred and is continuing with respect to the Notes. Any Global Note exchanged pursuant to clause (i) above shall be so exchanged in whole and not in part, and any Global Note exchanged pursuant to clause (ii) above may be exchanged in whole or from time to time in part as directed by the Depositary. Any Note issued in exchange for a Global Note or any portion thereof shall be a Global Note; provided that any such Note so issued that is registered in the name of a Person other than the Depositary or a nominee thereof shall not be a Global Note. In the event that Notes in certificated form are issued in respect of beneficial interests in a Regulation S Global Note at any time prior to one-year after the Issue Date of this Indenture (other than in a transaction subject to Rule 144A), the Company shall as promptly as practicable, institute procedures, including appropriate certifications, reasonably designed to ensure that any transfer of such certificated Notes prior to the end of such one-year period is made only in accordance with the provisions of Regulation S, pursuant to registration under the Securities Act or pursuant to an exemption from such registration.

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

(3) Subject to the provisions of clause (5) below, the registered Holder may grant proxies and otherwise authorize any Person, including Agent Members (as defined below) and persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Indenture or the Notes.

(4) In the event of the occurrence of any of the events specified in clause (1) above, the Company will promptly make available to the Trustee a reasonable supply of Certificated Notes in definitive, fully registered form, without interest coupons.

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

SECTION 2.13 CUSIP and ISIN Numbers. The Company in issuing the Notes may use "CUSIP" and "ISIN" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" and "ISIN" numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the CUSIP or "ISIN" numbers.

SECTION 2.14 Defaulted Interest. If the Company defaults in a payment of interest on the Notes, it shall pay, or shall deposit with the Paying Agent money in immediately available funds sufficient to pay, the defaulted interest, plus (to the extent lawful) any interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date. A special record date, as used in this Section 2.14 with respect to the payment of any defaulted interest, shall mean the 15th day next preceding the date fixed by the Company for the payment of defaulted interest, whether or not such day is a Business Day. At least 15 days before the subsequent special record date, the Company shall mail to each Holder and to the Trustee a notice that states the subsequent special record date, the payment date and the amount of defaulted interest to be paid.

## ARTICLE 3

## REDEMPTION AND PURCHASES

SECTION 3.01 Provisional Redemption.

Any time prior to June 20, 2004, the Company may, at its option, redeem the Notes in whole or in part on any date from time to time, upon notice as set forth in Section 3.05, at a redemption price equal to $1,000 per $1,000 principal amount of the Notes redeemed plus accrued and unpaid interest, if any (such amount, together with the Make-Whole Payment described below, the "Provisional Redemption Price"), to but excluding the date of redemption (the "Provisional Redemption Date") if (i) the Closing Price of the Common Stock has exceeded 150% of the Conversion Price (as defined in Article 10 and as such may be adjusted from time to



time) then in effect for at least 20 Trading Days in any consecutive 30-Trading Day period ending on the Trading Day prior to the date of mailing of the provisional notice of redemption pursuant to Section 3.05 (the "Notice Date") and (ii) a registration statement covering resales of the Notes and the Common Stock issuable upon conversion thereof is effective and available for use and is expected to remain effective for the 30 days following the Provisional Redemption Date (such redemption, a "Provisional Redemption").

Upon any such Provisional Redemption, the Company shall make an additional payment (the "Make-Whole Payment") in cash with respect to the Notes called for redemption to Holders on the Notice Date in an amount equal to $166.67 per $1,000 principal amount of the Notes less the amount of any interest actually paid on such Notes prior to the Provisional Redemption Date. The Company shall make the Make-Whole Payment on all Notes called for Provisional Redemption, including those Notes converted into Common Stock between the Notice Date and the Provisional Redemption Date.

SECTION 3.02 Optional Redemption.

Except as set forth under Section 3.01, the Notes are not redeemable prior to June 22, 2004. On and after June 22, 2004, the Company may, at its

option, redeem the Notes in whole at any time or in part from time to time, on any date prior to maturity, upon notice as set forth in Section 3.05, at the redemption price (expressed as percentages of the principal amount) set forth below.

<TABLE>
<CAPTION>

| During the Twelve Months Commencing | Redemption Price |
|---|---|
| <S> | <C> |
| June 22, 2004 through June 19, 2005 | 101.6% |
| Thereafter | 100.8% |

</TABLE>

(the "Optional Redemption Price"), plus any interest accrued but not paid prior to the Optional Redemption Date, if the Closing Price of the Common Stock has exceeded 130% of the Conversion Price (as defined in Article 10 and as such may be adjusted from time to time) then in effect for at least 20 Trading Days in any consecutive 30-Trading Day period ending on the Trading Day prior to the date of mailing of the notice of optional redemption pursuant to Section 3.05.

SECTION 3.03 Notice of Trustee.

If the Company elects to redeem Notes pursuant to the redemption provisions of Section 3.01 or Section 3.02 hereof, it shall notify the Trustee at least 20 days or 30 days, respectively, prior but not more than 60 days prior to the Redemption Date of such intended Redemption Date, the principal amount of Notes to be redeemed and the CUSIP numbers of the Notes to be redeemed.



SECTION 3.04 Selection of Notes to be Redeemed.

If fewer than all the Notes are to be redeemed, the Trustee shall select the particular Notes to be redeemed from the Outstanding Notes by a method that complies with the requirements of any exchange on which the Notes are listed, or, if the Notes are not listed on an exchange, on a pro rata basis or by lot or in accordance with any other method of Trustee considers fair and appropriate. Notes and portions thereof that the Trustee selects shall be in principal amounts equal to $1,000 or any whole multiple thereof.

If any Note selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Note so selected, the converted portion of such Note shall be deemed to be the portion selected for redemption (provided, however, that the Holder of such Note so converted and deemed redeemed shall not be entitled to any additional interest payment as a result of such deemed redemption than such Holder would have otherwise been entitled to receive upon conversion of such Note). Notes which have been converted during a selection of Notes to be redeemed may be treated by the Trustee as Outstanding for the purpose of such selection.

The Trustee shall promptly notify the Company and the Registrar in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Notes shall relate, in the case of any Notes redeemed or to be redeemed only in part, to the portion of the principal amount of such Notes which has been or is to be redeemed.

SECTION 3.05 Notice of Redemption. Notice of redemption shall be given in the manner provided in Section 12.02 hereof to the Holders of Notes to be redeemed. Such notice shall be given not less than 20 nor more than 60 days prior to the Redemption Date for redemption pursuant to Section 3.01, and not less than 30 nor more than 60 days prior to the Redemption Date for redemption pursuant to Section 3.02.

All notices of redemption shall state:

(1) the Redemption Date;

(2) the Redemption Price and interest accrued and unpaid to the Redemption Date, if any, and, with respect to Notes called for Provisional Redemption, the Make-Whole Payment;

(3) if fewer than all the outstanding Notes are to be redeemed, the aggregate principal amount of Notes to be redeemed and the aggregate principal amount of Notes which will be outstanding after such partial

redemption;

(4) that on the Redemption Date the Redemption Price and interest accrued and unpaid to the Redemption Date, if any, and, with respect to Notes called for Provisional Redemption, the Make-Whole Payment, will become due and payable upon each such



Note to be redeemed, and that interest thereon shall cease to accrue on and after such date;

(5) the Conversion Price, the date on which the right to convert the principal of the Notes to be redeemed will terminate and the places where such Notes may be surrendered for conversion;

(6) the place or places where such Notes are to be surrendered for payment of the Redemption Price and accrued and unpaid interest, if any; and

(7) the CUSIP or ISIN number of the Notes.

The notice given shall specify the last date on which exchanges or transfers of Notes may be made pursuant to Section 2.06 hereof, and shall specify the serial numbers of Notes and the portions thereof called for redemption.

Notice of redemption of Notes to be redeemed at the election of the Company shall be given by the Company.

SECTION 3.06 Effect of Notice of Redemption.
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Notice of redemption having been given as provided in Section 3.05 hereof, the Notes so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued and unpaid interest) such Notes shall cease to bear interest. Upon surrender of any such Note for redemption in accordance with such notice, such Note shall be paid by the Company at the Redemption Price plus accrued and unpaid interest, if any; provided, however, that the installments of interest on Notes whose Stated Maturity is prior to or on the Redemption Date shall be payable to the Holders of such Notes, or one or more Predecessor Notes, registered as such on the relevant Record Date according to their terms and the provisions of Section 2.01 hereof and, with respect to a Provisional Redemption, the Holder on the Notice Date of any Note converted into Common Stock between the Notice Date and the Provisional Redemption Date shall have the right to receive the Make-Whole Payment regardless of the conversion of such Note.

If any Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal and premium, if any, shall, until paid, bear interest from the Redemption Date at the Interest Rate.

SECTION 3.07 Deposit of Redemption Price.
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Prior to or on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent an amount of money sufficient to pay the Redemption Price of all the Notes to be redeemed on that Redemption Date (including, with respect to a Provisional Redemption, Make-Whole Payments due on the Provisional Redemption Date with respect to the Notes), other than any Notes called for redemption on that date which have been converted prior to the date of such deposit (except with respect to a Provisional Redemption as provided in Sections 3.01 and 3.06 hereof), and accrued and unpaid interest, if any, on such Notes.



If any Note called for redemption is converted, any money deposited with the Trustee or with a Paying Agent or so segregated and held in trust for the redemption of such Note shall (subject to any right of the Holder of such Note or any Predecessor Note to receive interest as provided in Section 4.01 hereof or Make-Whole Payments as provided in Section 3.01) be paid to the Company on Company Request or, if then held by the Company, shall be discharged from such trust.

SECTION 3.08 Notes Redeemed in Part.
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Any Note which is to be redeemed only in part shall be surrendered at an office or agency of the Company designated for that purpose pursuant to Section 4.05 hereof (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 the Holder's attorney duly authorized in writing), and the Company shall execute, and the

Trustee shall authenticate and deliver to the Holder of such Note without service charge, a new Note or Notes of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Note so surrendered.

SECTION 3.09 Conversion Arrangement on Call for Redemption. In connection with any redemption of Notes, the Company may arrange for the purchase and conversion of any Notes called for redemption by an agreement with one or more investment banks or other purchasers to purchase such Notes by paying to the Trustee in trust for the Noteholders, on or prior to 10:00 a.m. New York City time on the Redemption Date, an amount that, together with any amounts deposited with the Trustee by the Company for the redemption of such Notes, is not less than the Redemption Price of such Notes. Notwithstanding anything to the contrary contained in this Article 3, the obligation of the Company to pay the Redemption Price of such Notes shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers. If such an agreement is entered into, any Notes not duly surrendered for conversion by the Holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such Holders and (notwithstanding anything to the contrary contained in Article 10) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the Redemption Date, subject to payment of the above amount as aforesaid. The Trustee shall hold and pay to the Holders whose Notes are selected for redemption any such amount paid to it for purchase and conversion in the same manner as it would moneys deposited with it by the Company for the redemption of Notes. Without the Trustee's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Notes shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Notes between the Company and such purchasers, including the costs and expenses incurred by the Trustee in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture.



SECTION 3.10 Repurchase of Notes at Option of the Holder upon Change in Control. (a) If there shall have occurred a Change in Control, all or any portion of the Notes of any Holder equal to $1,000 or a whole multiple of $1,000, not previously called for redemption, shall be repurchased by the Company, at the option of such Holder, at a repurchase price equal to 100% of the principal amount of the Notes to be repurchased, together with interest accrued and unpaid to, but excluding, the repurchase date (the "Change in Control Repurchase Price"), on the date (the "Change in Control Repurchase Date") that is 45 Business Days after the Change in Control Repurchase Notice; provided, however, that installments of interest on Notes whose Stated Maturity is prior to or on the Change in Control Repurchase Date shall be payable to the Holders of such Notes, or one or more predecessor Notes, registered as such on the relevant Regular Record Date according to their terms.

Subject to the fulfillment by the Company of the conditions set forth in Section 3.10(b) hereof, the Company may elect to pay the Change in Control Repurchase Price by delivering the number of shares of Common Stock equal to (i) the Change in Control Repurchase Price divided by (ii) 95% of the average of the Closing Prices per share of Common Stock for the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the Change in Control Repurchase Date.

Whenever in this Indenture (including Sections 2.01, 6.01(a) and 6.07 hereof) or Exhibit A-1 annexed hereto there is a reference, in any context, to the principal of any Note as of any time, such reference shall be deemed to include reference to the Change in Control Repurchase Price payable in respect to such Note to the extent that such Change in Control Repurchase Price is, was or would be so payable at such time, and express mention of the Change in Control Repurchase Price in any provision of this Indenture shall not be construed as excluding the Change in Control Repurchase Price in those provisions of this Indenture when such express mention is not made; provided, however, that, for the purposes of Article 11 hereof, such reference shall be deemed to include reference to the Change in Control Repurchase Price only to the extent the Change in Control Repurchase Price is payable in cash.

A "Change in Control" of the Company shall be deemed to have occurred at such time as either of the following events shall occur:

(i) the acquisition by any person, including any syndicate or group deemed to be a "person" under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions of shares of the Capital Stock of the

Company entitling that person to exercise 50% or more of the total voting power of all shares of such Capital Stock entitled to vote generally in elections of directors, other than any acquisition by the Company, any of its subsidiaries or any of the employee benefit plans; or

(ii) any consolidation or merger of the Company with or into any other person, any merger of another person into the Company, or any conveyance, transfer, sale, lease or other disposition of all or substantially all of the Company's properties and assets to another person, other than:



(A) any transaction (1) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of the Company's capital stock and (2) pursuant to which holders of the Capital Stock immediately prior to the transaction have the entitlement to exercise, directly or indirectly, 50% or more of the total voting power of all shares of the Capital Stock entitled to vote generally in the election of directors of the continuing or surviving person immediately after the transaction; or

(B) any merger solely for the purpose of changing the Company's jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of Common Stock of the surviving entity;

(iii) during any consecutive two-year period, individuals who at the beginning of that two-year period constituted the board of directors of the Company (together with any new directors whose election to the board of directors of the Company, or whose nomination for election by the stockholders of the Company, was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose elections or nominations for election were previously so approved) cease for any reason to constitute a majority of the board of directors of the Company then in office; or

(iv) the Company is liquidated or dissolved or a resolution is passed by the Company's stockholders approving a plan of liquidation or dissolution of the Company other than in a transaction which complies with the provisions described in Article 5 of the Indenture.

Beneficial ownership shall be determined in accordance with Rule 13d-3 promulgated by the SEC under the Exchange Act. The term "person" shall include any syndicate or group which would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act.

(b) The following are conditions to the Company's election to pay for the Change in Control Repurchase Price in Common Stock:

(i) The shares of Common Stock to be issued upon repurchase of Notes hereunder:

(A) shall not require registration under any federal securities law before such shares may be freely transferable without being subject to any transfer restrictions under the Securities Act upon repurchase or, if such registration is required, such registration shall be completed and shall become effective prior to the Change in Control Repurchase Date; and

(B) shall not require registration with, or approval of, any governmental authority under any state law or any other federal law before shares may be validly issued or delivered upon repurchase or if such registration is required or such approval must be obtained, such registration shall be completed or such approval shall be obtained prior to the Change in Control Repurchase Date.



(ii) The shares of Common Stock to be listed upon repurchase of Notes hereunder are, or shall have been, approved for listing on the Nasdaq National Market or the New York Stock Exchange or listed on another national securities exchange, in any case, prior to the Change in Control Repurchase Date.

(iii) All shares of Common Stock which may be issued upon repurchase of Notes will be issued out of the Company's authorized but unissued Common Stock and will, upon issue, be duly and validly issued and fully paid and nonassessable and free of any preemptive or similar rights.

(iv) If any of the conditions set forth in clauses (i) through (iii) of this Section 3.08(b) are not satisfied in accordance with the terms thereof, the Change in Control Repurchase Price shall be paid by the Company only in cash.

(c) Unless the Company shall have theretofore called for redemption

all of the outstanding Notes, prior to or on the 30th day after the occurrence of a Change in Control, the Company, or, at the written request and expense of the Company prior to or on the 30th day after such occurrence, the Trustee, shall give to all Noteholders, in the manner provided in Section 12.02 hereof, notice of the occurrence of the Change in Control and of the repurchase right set forth herein arising as a result thereof. The Company shall also deliver a copy of such notice of a repurchase right to the Trustee. The notice shall include a form of Change in Control Repurchase Notice (as defined in Section 3.10(d)) to be completed by the Noteholder and shall state:

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

(2) the date by which the Change in Control Repurchase Notice pursuant to this Section 3.10 must be given;

(3) the Change in Control Repurchase Date;

(4) the Change in Control Repurchase Price;

(5) the name and address of the Paying Agent and the Conversion Agent;

(6) the Conversion Price and any adjustments thereto;

(7) that Notes as to which a Change in Control Repurchase Notice has been given may be converted pursuant to Article 10 hereof only if the Change in Control Repurchase Notice has been withdrawn in accordance with the terms of this Indenture;

(8) that Notes must be surrendered to the Paying Agent to collect payment;

(9) that the Change in Control Repurchase Price for any Note as to which a Change in Control Repurchase Notice has been duly given and not withdrawn will be paid promptly following the later of the Change in Control Repurchase Date and the time of surrender of such Note as described in (8) above;



(10) briefly, the procedures the Holder must follow to exercise rights under this Section 3.08;

(11) briefly, the conversion rights of the Notes;

(12) the procedures for withdrawing a Change in Control Repurchase Notice;

(13) that, unless the Company defaults in making payment of such Redemption Price, interest on Notes called for redemption will cease to accrue on and after the Redemption Date; and

(14) the CUSIP or ISIN number of the Notes.

(d) A Holder may exercise its rights specified in Section 3.10(a) hereof upon delivery of a written notice of purchase (a "Change in Control Repurchase Notice") to the Paying Agent at any time prior to the close of business on the Change in Control Repurchase Date, stating:

(1) the certificate number of the Note which the Holder will deliver to be purchased;

(2) the portion of the principal amount of the Note which the Holder will deliver to be purchased, which portion must be $1,000 or an integral multiple thereof; and

(3) that such Note shall be purchased pursuant to the terms and conditions specified in paragraph 6 of the Notes.

The delivery of such Note to the Paying Agent prior to, on or after the Change in Control Repurchase Date (together with all necessary endorsements) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Change in Control Repurchase Price therefor; provided, however, that such Change in Control Repurchase Price shall be so paid pursuant to this Section 3.10 only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Change in Control Repurchase Notice.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.10, a portion of a Note if the principal amount of such portion is $1,000 or an integral multiple of $1,000. Provisions of this Indenture that apply to the purchase of all of a Note also apply to the purchase of such portion of such Note.

Any purchase by the Company contemplated pursuant to the provisions of

this Section 3.10 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Change in Control Repurchase Date and the time of delivery of the Note to the Paying Agent in accordance with this Section 3.10.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Change in Control Repurchase Notice contemplated by this Section 3.10(d) shall have the right to withdraw such Change in Control Repurchase Notice at any time prior to



the close of business on the Change in Control Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.11.

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

SECTION 3.11 Effect of Change in Control Repurchase Notice. Upon receipt by the Paying Agent of the Change in Control Repurchase Notice specified in Section 3.10(d), the Holder of the Note in respect of which such Change in Control Repurchase Notice was given shall (unless such Change in Control Repurchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Change in Control Repurchase Price with respect to such Note. Such Change in Control Repurchase Price shall be paid to such Holder, subject to receipts of funds and/or Notes by the Paying Agent, promptly following the later of (x) the Change in Control Repurchase Date with respect to such Note (provided the conditions in Section 3.10(d) have been satisfied) and (y) the time of delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 3.10(d). Notes in respect of which a Change in Control Repurchase Notice, has been given by the Holder thereof may not be converted pursuant to Article 10 hereof on or after the date of the delivery of such Change in Control Repurchase Notice unless such Change in Control Repurchase Notice has first been validly withdrawn as specified in the following two paragraphs.

A Change in Control Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Change in Control Repurchase Notice at any time prior to the close of business on the Change in Control Repurchase Date specifying:

(1) the certificate number of the Note in respect of which such notice of withdrawal is being submitted,

(2) the principal amount of the Note with respect to which such notice of withdrawal is being submitted, and

(3) the principal amount, if any, of such Note which remains subject to the original Change in Control Repurchase Notice and which has been or will be delivered for purchase by the Company.

There shall be no repurchase of any Notes pursuant to Section 3.10 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Notes, of the required Change in Control Repurchase Notice) and is continuing an Event of Default (other than a default in the payment of the Change in Control Repurchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Notes (x) with respect to which a Change in Control Repurchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Change in Control Repurchase Price with respect to such Notes) in which case, upon such return, the Change in Control Repurchase Notice with respect thereto shall be deemed to have been withdrawn.



SECTION 3.12 Deposit of Change in Control Repurchase Price. Prior to 10:00 a.m. (New York City time) on the Business Day following the Change in Control Repurchase Date the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Business Day) or Common Stock, if permitted hereunder, sufficient to pay the aggregate Change in Control Repurchase Price of all the Notes or portions thereof which are to be purchased as of the Change in Control Repurchase Date.

SECTION 3.13 Notes Purchased in Part. Any Note which is to be purchased only in part shall be surrendered at the office of the Paying Agent (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 such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered which is not purchased.

SECTION 3.14 Covenant to Comply with Securities Laws upon Purchase of Notes. In connection with any offer to purchase or repurchase of Notes under Section 3.10 hereof (provided that such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), the Company shall (i) comply with Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act which may then be applicable, (ii) file the related Schedule 13E-3 (or any successor schedule, form or report) or any other schedule required under the Exchange Act, and (iii) otherwise comply with all federal and state securities laws so as to permit the rights and obligations under Section 3.10 to be exercised in the time and in the manner specified in Section 3.10.

SECTION 3.15 Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any cash or shares of Common Stock that remain unclaimed as provided in paragraph 12 of the Notes, together with interest or dividends, if any, thereon, held by them for the payment of the Change in Control Repurchase Price; provided, however, that to the extent that the aggregate amount of cash or shares of Common Stock deposited by the Company pursuant to Section 3.12 exceeds the aggregate Change in Control Repurchase Price of the Notes or portions thereof which the Company is obligated to purchase as of the Change in Control Repurchase Date then promptly after the Business Day following the Change in Control Repurchase Date the Trustee shall return any such excess to the Company together with interest or dividends, if any, thereon.

## ARTICLE 4

## COVENANTS

SECTION 4.01 Payment of Principal, Premium, Interest on the Notes. The Company will duly and punctually pay the principal of and premium, if any, and interest at the



Interest Rate in respect of the Notes in accordance with the terms of the Notes and this Indenture. The Company will deposit or cause to be deposited with the Trustee as directed by the Trustee, no later than the day of the Stated Maturity of any Note or installment of interest, all payments so due. Principal amount, Redemption Price, Change in Control Repurchase Price, and cash interest shall be considered paid on the applicable date due if on such date (or, in the case of a Change in Control Repurchase Price on the Business Day following the applicable Change in Control Repurchase Date) the Trustee or the Paying Agent holds, in accordance with this Indenture, money or Notes, if permitted hereunder, sufficient to pay all such amounts then due.

The Company shall, to the extent permitted by law, pay cash interest on overdue amounts at the rate per annum set forth in paragraph 1 of the Notes, compounded semiannually, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

SECTION 4.02 SEC and Other Reports. The Company shall file with the Trustee, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the SEC, copies of its annual report and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. If at any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, such reports shall be provided at the times the Company would have been required to provide reports had it continued to have been subject to such reporting requirements. The Company also shall comply with the other provisions of TIA Section 314(a).

SECTION 4.03 Compliance Certificate. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on June 30, 2001) an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of

grace or requirement of notice provided hereunder) and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

SECTION 4.04 Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

SECTION 4.05 Maintenance of Office or Agency. The Company will maintain in the Borough of Manhattan, the City of New York, an office or agency of the Trustee, Registrar, Paying Agent and Conversion Agent where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer, exchange, purchase, redemption or conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The office of American Stock Transfer & Trust Company, located at 59 Maiden Lane, New York, New York 10038, attention: Corporate Trust Department, shall initially be such office or agency for all of the aforesaid purposes. The Company shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office of the



Trustee). If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 12.02.

The Company may also from time to time designate one or more other offices or agencies where the Notes 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.

SECTION 4.06 Delivery of Certain Information. At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a holder or any beneficial holder of Notes or shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder or any beneficial holder of Notes or holder of shares of Common Stock issued upon conversion of Notes, or to a prospective purchaser of any such security designated by any such holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act in connection with the resale of any such security. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act.

## ARTICLE 5

## SUCCESSOR CORPORATION

SECTION 5.01 When Company May Merge or Transfer Assets. The Company shall not consolidate with, merge with or into any other person or convey, transfer or lease its properties and assets substantially as an entirety to any person, unless:

(a) either (1) the Company shall be the continuing corporation or (2) the person (if other than the Company) formed by such consolidation or into which the Company is merged or the person which acquires by conveyance, transfer or lease the properties and assets of the Company substantially as an entirety (i) shall be organized and validly existing under the laws of the United States or any State thereof or the District of Columbia and (ii) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, all of the obligations of the Company under the Notes and this Indenture;

(b) at the time of such transaction, no Event of Default and no event which, after notice or lapse of time, would become an Event of Default, shall have happened and be continuing; and

(c) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Article 5 and that all conditions precedent herein provided for relating to such transaction have been satisfied.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise) of the properties and assets of one or more Subsidiaries (other than to the Company or another Subsidiary), which, if such assets were owned by the Company, would constitute all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The successor person formed by such consolidation or into which the Company is merged or the successor person to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein; and thereafter, except in the case of a lease and obligations the Company may have under a supplemental indenture pursuant to Section 10.11, the Company shall be discharged from all obligations and covenants under this Indenture and the Notes. Subject to Section 9.06, the Company, the Trustee and the successor person shall enter into a supplemental indenture to evidence the succession and substitution of such successor person and such discharge and release of the Company.

## ARTICLE 6

## DEFAULTS AND REMEDIES

SECTION 6.01 Events of Default. An "Event of Default" occurs if:
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(1) the Company fails to pay when due the principal of or premium, if any, on any of the Notes at maturity, upon redemption or exercise of a repurchase right or otherwise, whether or not such payment is prohibited by Article 11 of this Indenture;

(2) the Company fails to pay an installment of interest (including liquidated damages, if any) on any of the Notes that continues for 30 days after the date when due, whether or not such payment is prohibited by Article 11 of this Indenture;

(3) the Company fails to deliver shares of Common Stock, together with cash in lieu of fractional shares, when such Common Stock or cash in lieu of fractional shares is required to be delivered upon conversion of a Note and such failure continues for 10 days after such delivery date;

(4) the Company fails to perform or observe any other term, covenant or agreement contained in the Notes or this Indenture for a period of 60 days after receipt by the Company of a Notice of Default (as defined in this Section 6.01);

(5) (A) one or more defaults in the payment of principal of or premium, if any, on any of the Company's Indebtedness aggregating $5.0 million or more, when the same becomes due and payable at the scheduled maturity thereof, and such default or defaults shall have continued after any applicable grace period and shall not have been cured or waived within a 30-day period after the date of a Notice of Default or (B) any of the Company's Indebtedness aggregating $5.0 million or more shall have been accelerated or otherwise declared due and payable, or required to be prepaid or repurchased (other than



by regularly scheduled required prepayment) prior to the scheduled maturity thereof and such acceleration is not rescinded or annulled within a 30-day period after a Notice of Default;

(6) the Company, or any Significant Subsidiary, or any Subsidiaries of the Company which in the aggregate would constitute a Significant Subsidiary pursuant to or under or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case or proceeding;

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

(C) consents to the appointment of a Custodian of it or for any substantial part of its property;

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

(E) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or

(F) consents to the filing of such a petition or the appointment of or taking possession by a Custodian; and

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

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

(B) appoints a Custodian of the Company or any Significant Subsidiary or any Subsidiaries of the Company which in the aggregate would constitute a Significant Subsidiary or for any substantial part of its or their properties; or

(C) orders the winding up or liquidation of the Company or any Significant Subsidiary or any Subsidiaries of the Company which in the aggregate would constitute a Significant Subsidiary;

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

"Bankruptcy Law" means Title 11, United States Code, or any similar federal or state law for the relief of debtors.



"Custodian" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A Default under clause (4) or (5) above is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in aggregate principal amount of the Notes at the time outstanding notify the Company and the Trustee, of the Default and the Company does not cure such Default (and such Default is not waived) within the time specified in clause (4) or (5) above after actual receipt of such notice. Any such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default".

The Company will deliver to the Trustee, within five Business Days of becoming aware of the occurrence of an Event of Default, written notice thereof. In addition, the Company shall deliver to the Trustee, within 30 days after it becomes aware of the occurrence thereof, written notice of any event which with the lapse of time would become an Event of Default under clause (4) or (5) above, its status and what action the Company is taking or proposes to take with respect thereto.

SECTION 6.02 Acceleration. If an Event of Default (other than an Event
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of Default specified in Section 6.01(6) or (7)) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the Notes at the time outstanding by notice to the Company and the Trustee, may declare the notes due and payable at their principal amount together with accrued interest. Upon a declaration of acceleration, such principal and accrued and unpaid interest to the date of payment shall be immediately due and payable.

If an Event of Default specified in Section 6.01(6) or (7) above occurs and is continuing, then the principal and the interest on all the Notes shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Noteholders.

The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, by notice to the Trustee (and without notice to any other Noteholder) may rescind or annul an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of the principal and any accrued cash interest that have become due solely as a result of acceleration and if all amounts due to the Trustee under Section 7.06 have been paid. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

SECTION 6.03 Other Remedies. If an Event of Default occurs and is
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continuing, the Trustee may pursue any available remedy to collect the payment of the principal, the premium, if any, and any accrued cash interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if the Trustee does not possess any of the Notes or produce any of the Notes in the proceeding. A delay or omission by the Trustee or any Noteholder in exercising any right or remedy accruing upon an Event of Default shall not

impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

SECTION 6.04 Waiver of Past Defaults. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, by notice to the Trustee (and without notice to any other Noteholder), may waive an existing Default and its consequences except (1) an Event of Default described in Section 6.01(1) or (2), (2) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Noteholder affected or (3) a Default which constitutes a failure to convert any Note in accordance with the terms of Article 10. When a Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or impair any consequent right. This Section 6.04 shall be in lieu of Section 316(a)1(B) of the TIA and such Section 316(a)1(B) is hereby expressly excluded from this Indenture, as permitted by the TIA.

SECTION 6.05 Control by Majority. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines in good faith is unduly prejudicial to the rights of other Noteholders or would involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it against loss, liability or expense. This Section 6.05 shall be in lieu of Section 316(a)1(A) of the TIA and such Section 316(a)1(A) is hereby expressly excluded from this Indenture, as permitted by the TIA.

SECTION 6.06 Limitation on Suits. A Noteholder may not pursue any remedy with respect to this Indenture or the Notes unless:

(1) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;

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

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

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

(5) the Holders of a majority in aggregate principal amount of the Notes at the time outstanding do not give the Trustee a direction inconsistent with the request during such 60-day period.

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

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 the principal



amount, premium, if any, plus Redemption Price, Change in Control Repurchase Price or any accrued cash interest in respect of the Notes held by such Holder, on or after the respective due dates expressed in the Notes or any Redemption Date, and to convert the Notes in accordance with Article 10, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected adversely without the consent of such Holder.

SECTION 6.08 Collection Suit by Trustee. If an Event of Default described in Section 6.01(1) or (2) 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 owing with respect to the Notes and the amounts provided for in Section 7.06.

SECTION 6.09 Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Notes or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of

whether the principal amount, Redemption Price, Change in Control Repurchase Price or any accrued cash interest in respect of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any such amount) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the principal amount, Redemption Price, Change in Control Repurchase Price or any accrued cash interest and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel or any other amounts due the Trustee under Section 7.06) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay 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 7.06.

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 Notes 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 6, it shall pay out the money in the following order:



(1) to the Trustee for amounts due under Section 7.06;

(2) to Noteholders for amounts due and unpaid on the Notes for the principal amount, Redemption Price, Change in Control Purchase Price or any accrued cash interest as the case may be, ratably, without preference or priority of any kind, according to such amounts due and payable on the Notes; and

(3) the balance, if any, to the Company.

The Trustee may fix a record date and payment date for any payment to Noteholders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall mail to each Noteholder and the Company a notice that states the record date, the payment date and the amount to be paid.

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 (other than the Trustee) in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 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 10% in aggregate principal amount of the Notes at the time outstanding. This Section 6.11 shall be in lieu of Section 315(e) of the TIA and such Section 315(e) is hereby expressly excluded from this Indenture, as permitted by the TIA.

SECTION 6.12 Waiver of Stay, Extension or Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the principal amount, Redemption Price, Change in Control Repurchase Price or any accrued cash interest in respect of Notes, or any interest on such amounts, as contemplated herein, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 7

TRUSTEE

SECTION 7.01 Duties and Responsibilities of the Trustee; During Default; Prior to Default. The Trustee, prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all such Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an



Event of Default hereunder has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that

(a) prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all such Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as 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 on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any statements, certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such statements, certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

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

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders pursuant to Section 6.05 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there shall be reasonable ground for believing that the repayment of such funds or adequate indemnity against such liability is not reasonably assured to it.

The provisions of this Section 7.01 are in furtherance of and subject to Sections 315 and 316 of the TIA.

SECTION 7.02 Certain Rights of the Trustee. In furtherance of and subject to the TIA and subject to Section 7.01:



(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, Officers' Certificate or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon, Note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the secretary or an assistant secretary of the

Company;

(c) the Trustee may consult with counsel of its selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the trusts or powers vested in it by this Indenture with the request, order or direction of any of the Noteholders pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby;

(e) the Trustee shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion, rights or powers conferred upon it by this Indenture;

(f) prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all such Events of Default, the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document unless requested in writing to do so by the Holders of not less than a majority in aggregate principal amount of the Notes then outstanding; provided that, if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such expenses or liabilities as a condition to proceeding; the reasonable expenses of every such investigation shall be paid by the Company or, if paid by the Trustee or any predecessor trustee, shall be repaid by the Company upon demand; and

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys not regularly in its employ and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed with due care by it hereunder.



SECTION 7.03 Trustee Not Responsible for Recitals, Disposition of Notes or Application of Proceeds Thereof. The recitals contained herein and in the Notes, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any of the Notes or of the proceeds thereof.

SECTION 7.04 Trustee and Agents May Hold Notes; Collections, etc. The Trustee or any agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee or such agent and, subject to Sections 7.08 and 7.13, if operative, may otherwise deal with the Company and receive, collect, hold and retain collections from the Company with the same rights it would have if it were not the Trustee or such agent.

SECTION 7.05 Moneys Held by Trustee. Subject to the provisions of Section 8.02 hereof, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by mandatory provisions of law. Neither the Trustee nor any agent of the Company or the Trustee shall be under any liability for interest on any moneys received by it hereunder.

SECTION 7.06 Compensation and Indemnification of Trustee and Its Prior Claim. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) to be agreed to in writing by the Trustee and the Company, and the Company covenants and agrees to pay or reimburse the Trustee and each predecessor Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provisions of this Indenture (including (i) the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other

persons not regularly in its employ and (ii) interest at the prime rate on any disbursements and advances made by the Trustee and not paid by the Company within 5 days after receipt of an invoice for such disbursement or advance) except any such expense, disbursement or advance as may arise from its negligence or bad faith. The Company also covenants to indemnify the Trustee and each predecessor Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder and its duties hereunder, including the costs and expenses of defending itself against or investigating any claim of liability in the premises. The obligations of the Company under this Section 7.06 to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture. Such additional indebtedness shall be a senior claim to that of the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Notes, and the Notes are hereby effectively subordinated to such senior claim to such extent. The provisions of this Section 7.06 shall survive the termination of this Indenture. When the Trustee incurs expenses or renders services



in connection with an Event of Default specified in Section 6.01 or in connection with Article Six hereof, the expenses (including the reasonable fees and expenses of its counsel) and the compensation for services in connection therewith are to constitute expenses of administration under any bankruptcy law.

SECTION 7.07 Right of Trustee to Rely on Officers' Certificate, etc.

Subject to Sections 7.01 and 7.02, whenever in the administration of the trusts of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

SECTION 7.08 Conflicting Interests. If the Trustee has or shall acquire a conflicting interest within the meaning of the TIA, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the TIA.

SECTION 7.09 Persons Eligible for Appointment as Trustee. The Trustee shall at all times be a corporation or banking association having a combined capital and surplus of at least $10,000,000. If such corporation or banking association publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then, for the purposes of this Section 7.09, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.09, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.10.

SECTION 7.10 Resignation and Removal; Appointment of Successor Trustee. (a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all series of Notes by giving written notice of resignation to the Company and by mailing notice thereof by first class mail to the Holders of Notes at their last addresses as they shall appear on the Note register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee or trustees by written instrument in duplicate, executed by authority of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee or trustees. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Noteholder who has been a bona fide Holder of a Note for at least six months may, subject to the provisions of Section 7.11, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with the provisions of Section 7.08 with respect to any Notes after written request therefor by the Company or by any Noteholder who has been a bona fide Holder of a Note for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 and shall fail to resign after written request therefor by the Company or by any Noteholder; or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent, or a receiver or liquidator of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation; or

(iv) the Company shall determine that the Trustee has failed to perform its obligations under this Indenture in any material respect;

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors of the Company, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 7.11, any Noteholder who has been a bona fide Holder of a Note for at least six months may on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee. If no successor trustee shall have been appointed and have accepted appointment within 30 days after a notice of removal has been given, the removed trustee may petition a court of competent jurisdiction for the appointment of a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding may at any time remove the Trustee and appoint a successor trustee by delivering to the Trustee so removed, to the successor trustee so appointed and to the Company the evidence provided for in Section 1.05 of the action in that regard taken by the Noteholders.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section 7.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.11.

SECTION 7.11 Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 7.10 shall execute and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee hereunder; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall pay over to the successor trustee all moneys at the time held by it hereunder and shall execute and deliver an instrument transferring to such successor trustee all such rights, powers,



duties and obligations. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a prior claim upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09.

Upon acceptance of appointment by any successor trustee as provided in this Section 7.11, the Company shall mail notice thereof by first class mail to the Holders of Notes at their last addresses as they shall appear in the register. If the acceptance of appointment is substantially contemporaneous with the resignation, then the notice called for by the preceding sentence may be combined with the notice called for by Section 7.10. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

SECTION 7.12 Merger, Conversion, Consolidation or Succession to

Business of Trustee. Any corporation or banking association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or banking association resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or banking association succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided that such corporation or banking association shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee and deliver such Notes so authenticated; and, in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor Trustee; and in all such cases such certificate shall have the full force and effect that this Indenture provides for the certificate of authentication of the Trustee; provided, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

SECTION 7.13 Preferential Collection of Claims Against the Company. The Trustee shall comply with the provisions of Section 311 of the TIA.

SECTION 7.14 Reports by the Trustee. (a) The Trustee shall transmit to Holders and other persons such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the TIA on or before July 15 in each year that such report is required, such reports to be dated as of the immediately preceding May 15.



(b) A copy of each such report shall, at the time of such transmission to Noteholders, be furnished to the Company and be filed by the Trustee with each stock exchange upon which the Notes are listed and also with the SEC. The Company agrees to notify the Trustee when and as the Notes become admitted to trading on any national securities exchange.

SECTION 7.15 Trustee to Give Notice of Default, But May Withhold in Certain Circumstances. The Trustee shall transmit to the Noteholders, as the names and addresses of such Holders appear on the Note register, notice by mail of all Defaults which have occurred, such notice to be transmitted within 90 days after the occurrence thereof, unless such defaults shall have been cured before the giving of such notice; provided that, except in the case of Default in the payment of the principal of, interest on, or other similar obligation with respect to, any of the Notes, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors or trustees and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the best interests of the Noteholders.

## ARTICLE 8

## DISCHARGE OF INDENTURE

SECTION 8.01 Discharge of Liability on Notes. When (i) the Company delivers to the Trustee all outstanding Notes (other than Notes replaced pursuant to Section 2.07) for cancellation or (ii) all outstanding Notes have become due and payable and the Company deposits with the Trustee cash or, if expressly permitted by the terms of the Notes, Common Stock sufficient to pay all amounts due and owing on all outstanding Notes (other than Notes replaced pursuant to Section 2.07), and if in either case the Company pays all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 7.06, cease to be of further effect. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and Opinion of Counsel and at the cost and expense of the Company.

SECTION 8.02 Repayment of the Company. The Trustee and the Paying Agent shall return to the Company upon written request any money or securities held by them for the payment of any amount with respect to the Notes that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person and the Trustee and the Paying

Agent shall have no further liability to the Noteholders with respect to such money or securities for that period commencing after the return thereof.



ARTICLE 9

AMENDMENTS

SECTION 9.01 Without Consent of Holders. The Company and the Trustee may amend this Indenture or the Notes without the consent of any Noteholder for the purposes of, among other things:

(1) adding to the Company's covenants for the benefit of the Holders;

(2) surrendering any right or power conferred upon the Company;

(3) providing for conversion rights of Holders if any reclassification or change of Common Stock or any consolidation, merger or sale of all or substantially all of the Company's assets occurs;

(4) providing for the assumption of the Company's obligations to the Holders in the case of a merger, consolidation, conveyance, transfer or lease;

(5) reducing the Conversion Price, provided that the reduction will not adversely affect the interests of Holders in any material respect;

(6) complying with the requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;

(7) making any changes or modifications to this Indenture necessary in connection with the registration of the Notes under the Securities Act as contemplated by the registration rights agreement, provided that this action does not adversely affect the interests of the Holders in any material respect;

(8) curing any ambiguity or correcting or supplementing any defective provision contained in this Indenture; provided that such modification or amendment does not, in the good faith opinion of the board of directors of the Company and the Trustee, adversely affect the interests of the Holders in any material respect;

(9) adding or modifying any other provisions which the Company and the Trustee may deem necessary or desirable and which will not adversely affect the interests of the Holders in any material respect;

(10) complying with Article 5;

(11) providing for uncertificated Notes in addition to the Certificated Notes so long as such uncertificated Notes are in registered form for purposes of the Internal Revenue Code of 1986, as amended; or

(12) adding to the Company's covenants or obligations under this Indenture for the protection of the Holders or surrendering any right, power or option conferred by this Indenture on the Company.



SECTION 9.02 With Consent of Holders. With the written consent of the Holders of at least a majority in aggregate principal amount of the Notes at the time outstanding, the Company and the Trustee may amend this Indenture or the Notes. However, without the consent of each Noteholder affected, an amendment to this Indenture or the Notes may not:

(1) change the maturity of the principal of or any installment of interest on any Note (including any payment of liquidated damages);

(2) reduce the principal amount of, or any premium or interest on (including any payment of liquidated damages), any Note;

(3) reduce the interest rate or interest (including liquidated damages) on any Note;

(4) change the currency of payment of principle amount of, premium, if any, or interest in any Note;

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

(6) except as otherwise permitted or contemplated by provisions of this Indenture concerning corporate reorganizations, adversely affect the repurchase option of Holders upon a Change in Control or the conversion

rights of Holders;

(7) modify the subordination provisions of the Notes in a manner adverse to the Holders; or

(8) reduce the percentage in aggregate principal amount of Notes outstanding necessary to modify or amend this Indenture or to waive any past default.

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, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the Company shall mail to each Holder a notice briefly describing the amendment.

SECTION 9.03 Compliance with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall comply with the TIA.

SECTION 9.04 Revocation and Effect of Consents, Waivers and Actions. Until an amendment, waiver or other action by Holders becomes effective, a consent thereto by a Holder of a Note hereunder is a continuing consent by the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same obligation as the consenting Holder's Note, even if notation of the consent, waiver or action is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date the amendment, waiver or action becomes effective. After an amendment, waiver or action becomes effective, it shall bind every Noteholder.



SECTION 9.05 Notation on or Exchange of Notes. Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Notes.

SECTION 9.06 Trustee to Sign Supplemental Indentures. The Trustee shall sign any supplemental indenture authorized pursuant to this Article 9 if the amendment contained therein does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign such supplemental indenture. In signing such supplemental indenture the Trustee shall be entitled to receive, and (subject to the provisions of Section 7.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

SECTION 9.07 Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

## ARTICLE 10

## CONVERSION

SECTION 10.01 Conversion Right and Conversion Price. Subject to and upon compliance with the provisions of this Article, at the option of the Holder thereof, any Note or any portion of the principal amount thereof which is $1,000 or an integral multiple of $1,000 may be converted at the principal amount thereof, or of such portion thereof, into duly authorized, fully paid and nonassessable shares of Common Stock, at the Conversion Price, determined as hereinafter provided, in effect at the time of conversion. Such conversion right shall expire at the close of business on June 20, 2006.

In case a Note or portion thereof is called for redemption, such conversion right in respect of the Note or the portion so called, shall expire at the close of business on the Business Day preceding the Redemption Date, unless the Company defaults in making the payment due upon redemption. In the case of a Change in Control for which the Holder exercises its repurchase right with respect to a Note or portion thereof, such conversion right in respect of the Note or portion thereof shall expire at the close of business on the Business Day immediately preceding the Change in Control Repurchase Date.

The price at which shares of Common Stock shall be delivered upon conversion (the "Conversion Price") shall be initially equal to $60.60 per share of Common Stock. The Conversion Price shall be adjusted in certain instances as provided in paragraphs (a), (b), (c), (d), (e), (f), (h) and (i) of Section 10.04 and Section 10.12 hereof.



SECTION 10.02 Exercise of Conversion Right. To exercise the conversion right, the Holder of any Note to be converted shall surrender such Note duly endorsed or assigned to the Company or in blank, at the office of any Conversion Agent, accompanied by a duly signed conversion notice substantially in the form attached to the Note to the Company stating that the Holder elects to convert such Note or, if less than the entire principal amount thereof is to be converted, the portion thereof to be converted.

Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the opening of business on the next succeeding Interest Payment Date shall be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest to be received on such Interest Payment Date on the principal amount of Notes being surrendered for conversion.

Notes shall be deemed to have been converted immediately prior to the close of business on the day of surrender of such Notes for conversion in accordance with the foregoing provisions, and at such time the rights of the Holders of such Notes as Holders shall cease, and the Person or Persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the conversion date, the Company shall cause to be issued and delivered to such Conversion Agent a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, together with payment in lieu of any fraction of a share as provided in Section 10.03 hereof.

In the case of any Note which is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Note or Notes of authorized denominations in aggregate principal amount equal to the unconverted portion of the principal amount of such Notes.

If shares of Common Stock to be issued upon conversion of a Restricted Note, or securities to be issued upon conversion of a Restricted Note in part only, are to be registered in a name other than that of the Holder of such Restricted Note, such Holder must deliver to the Conversion Agent a certificate in substantially the form set forth in the form of Note set forth in Exhibit A annexed hereto, dated the date of surrender of such Restricted Note and signed by such Holder, as to compliance with the restrictions on transfer applicable to such Restricted Note. Neither the Trustee nor any Conversion Agent, Registrar or Transfer Agent shall be required to register in a name other than that of the Holder shares of Common Stock or Notes issued upon conversion of any such Restricted Note not so accompanied by a properly completed certificate.

The Company hereby initially appoints the Trustee as the Conversion Agent.

SECTION 10.03 Fractions of Shares. No fractional shares of Common Stock shall be issued upon conversion of any Note or Notes. If more than one Note shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issued upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock which would otherwise be issued upon conversion of any Note or Notes (or specified portions thereof), the Company shall pay a cash adjustment in respect of such



fraction (calculated to the nearest one-100th of a share) in an amount equal to the same fraction of the quoted price of the Common Stock as of the Trading Day preceding the date of conversion.

SECTION 10.04 Adjustment of Conversion Price. The Conversion Price shall be subject to adjustments, calculated by the Company, from time to time as follows:

(a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by

multiplying such Conversion Price by a fraction:

(1) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the Record Date (as defined in Section 10.4(g)) fixed for such determination, and

(2) the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution.

Such reduction shall become effective immediately after the opening of business on the day following the Record Date. If any dividend or distribution of the type described in this Section 10.04(a) is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(b) In case the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(c) In case the Company shall issue rights or warrants (other than any rights or warrants referred to in Section 10.04(d)) to all holders of its outstanding shares of Common Stock entitling them to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price per share (or having a conversion price per share) less than the Current Market Price (as defined in Section 10.04(g)) on the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect at the opening of business on the date after such Record Date by a fraction:



(1) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the Record Date plus the number of shares which the aggregate offering price of the total number of shares so offered for subscription or purchase (or the aggregate conversion price of the convertible securities so offered) would purchase at such Current Market Price, and

(2) the denominator of which shall be the number of shares of Common Stock outstanding on the close of business on the Record Date plus the total number of additional shares of Common Stock so offered for subscription or purchase (or into which the convertible securities so offered are convertible).

Such adjustment shall become effective immediately after the opening of business on the day following the Record Date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock (or securities convertible into Common Stock) are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants the Conversion Price shall be readjusted to the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock (or securities convertible into Common Stock) actually delivered. In the event that such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration if other than cash, to be determined by the Board of Directors.

(d) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Company (other than any dividends or distributions to which Section 10.04(a) applies) or evidences of its indebtedness, cash or other assets, including securities, but excluding (1) any rights or warrants referred to in Section 10.04(c), (2) any dividends or distributions in connection with a reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance to which Section 10.11 hereof

applies and (3) dividends and distributions paid exclusively in cash (the securities described in foregoing clauses (1), (2) and (3) hereinafter in this Section 10.04(d) called the "excluded securities"), then, in each such case, subject to the second succeeding paragraph of this Section 10.04(d), the Conversion Price shall be adjusted so that the same shall be equal to the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the Record Date (as defined in Section 10.04(g)) with respect to such distribution by a fraction:

(1) the numerator of which shall be the Current Market Price (determined as provided in Section 10.04(g)) on such date less the fair market value (as determined by the Board of Directors, whose determination shall be



conclusive and set forth in a Board Resolution) on such date of the portion of the securities so distributed (other than excluded securities) applicable to one share of Common Stock (determined on the basis of the number of shares of the Common Stock outstanding on the Record Date), and

(2) the denominator of which shall be such Current Market Price.

Such reduction shall become effective immediately prior to the opening of business on the day following the Record Date. However, in the event that the then fair market value (as so determined) of the portion of the securities so distributed (other than excluded securities) applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion of a Note (or any portion thereof) the amount of securities so distributed (other than excluded securities) such Holder would have received had such Holder converted such Note (or portion thereof) immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

If the Board of Directors determines the fair market value of any distribution for purposes of this Section 10.04(d) by reference to the actual or when issued trading market for any securities comprising all or part of such distribution (other than excluded securities), it must in doing so consider the prices in such market over the same period (the "Reference Period") used in computing the Current Market Price pursuant to Section 10.04(g) to the extent possible, unless the Board of Directors in a Board Resolution determines in good faith that determining the fair market value during the Reference Period would not be in the best interest of the Holder.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"):

(i) are deemed to be transferred with such shares of Common Stock;

(ii) are not exercisable; and

(iii) are also issued in respect of future issuances of Common Stock,

shall be deemed not to have been distributed for purposes of this Section 10.04(d) (and no adjustment to the Conversion Price under this Section 10.04(d) will be required) until the occurrence of the earliest Trigger Event. If such right or warrant is subject to subsequent events, upon the occurrence of which such right or warrant shall become exercisable to purchase different securities, evidences of indebtedness or other assets or entitle the holder to purchase a different number or amount of the foregoing or to purchase any of the foregoing at a different purchase price, then the occurrence of each such event shall be deemed to be the date of issuance and record date with respect to a new right or



warrant (and a termination or expiration of the existing right or warrant without exercise by the holder thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto, that resulted in an adjustment to the Conversion Price under this Section 10.04(d):

(1) in the case of any such rights or warrants which shall all

have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrant (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and

(2) in the case of such rights or warrants all of which shall have expired or been terminated without exercise, the Conversion Price shall be readjusted as if such rights and warrants had never been issued.

For purposes of this Section 10.04(d) and Sections 10.04(a), 10.04(b) and 10.04(c), any dividend or distribution to which this Section 10.04(d) is applicable that also includes shares of Common Stock, a subdivision or combination of Common Stock to which Section 10.04(b) applies, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 10.04(c) applies (or any combination thereof), shall be deemed instead to be:

(3) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants other than such shares of Common Stock, such subdivision or combination or such rights or warrants to which Sections 10.04(a), 10.04(b) and 10.04(c) apply, respectively (and any Conversion Price reduction required by this Section 10.04(d) with respect to such dividend or distribution shall then be made), immediately followed by

(4) a dividend or distribution of such shares of Common Stock, such subdivision or combination or such rights or warrants (and any further Conversion Price reduction required by Sections 10.04(a), 10.04(b) and 10.04(c) with respect to such dividend or distribution shall then be made), except:

(A) the Record Date of such dividend or distribution shall be substituted as (x) "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution", "Record Date fixed for such determinations" and "Record Date" within the meaning of Section 10.04(a), (y) "the day upon which such subdivision becomes effective" and "the day upon which such combination becomes effective" within the meaning of Section 10.04(b), and (z) as "the date fixed for the determination of stockholders entitled to receive such rights or warrants", "the Record Date fixed for the determination of the stockholders entitled



to receive such rights or warrants" and such "Record Date" within the meaning of Section 10.04(c), and

(B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 10.04(a) and any reduction or increase in the number of shares of Common Stock resulting from such subdivision or combination shall be disregarded in connection with such dividend or distribution.

(e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding any cash that is distributed upon a reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance to which Section 10.11 hereof applies or as part of a distribution referred to in Section 10.04(d) hereof), in an aggregate amount that, combined together with: (1) the aggregate amount of any other such distributions to all holders of Common Stock made exclusively in cash within the 12 months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to this Section 10.04(e) has been made, and (2) the aggregate of any cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution) of consideration payable in respect of any tender offer or exchange offer by the Company or any of its subsidiaries for all or any portion of the Common Stock concluded within the 12 months preceding the date of such distribution, and in respect of which no adjustment pursuant to Section 10.04(f) hereof has been made, exceeds 10% of the product of the Current Market Price (determined as provided in Section 10.04(g)) on the Record Date with respect to such distribution times the number of shares of Common Stock outstanding on such date, then and in each such case, immediately after the close of business on such date, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close

of business on such Record Date by a fraction:

(i) the numerator of which shall be equal to the Current Market Price on the Record Date less an amount equal to the quotient of (x) the excess of such combined amount over such 10% and (y) the number of shares of Common Stock outstanding on the Record Date, and

(ii) the denominator of which shall be equal to the Current Market Price on such date.

However, in the event that the then fair market value (as so determined) of the portion of the securities so distributed (other than excluded securities) applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion of a Note (or any portion thereof) the amount of cash such Holder would have received had such Holder converted such Note (or portion thereof) immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be



adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(f) In case a tender offer or exchange offer made by the Company or any of its subsidiaries for all or any portion of the Common Stock shall expire and such tender offer or exchange offer (as amended upon the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender offer or exchange offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution) that combined together with:

(1) the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution), as of the expiration of such tender offer or exchange offer, of consideration payable in respect of any other tender offers or exchange offers, by the Company or any of its subsidiaries for all or any portion of the Common Stock expiring within the 12 months preceding the expiration of such tender offer or exchange offer and in respect of which no adjustment pursuant to this Section 10.04(f) has been made, and

(2) the aggregate amount of any distributions to all holders of the Company's Common Stock made exclusively in cash within 12 months preceding the expiration of such tender offer or exchange offer and in respect of which no adjustment pursuant to Section 10.04(e) has been made, exceeds 10% of the product of the Current Market Price (determined as provided in Section 10.04(g)) as of the last time (the "Expiration Time") tenders or exchanges could have been made pursuant to such tender offer or exchange offer (as it may be amended) times the number of shares of Common Stock outstanding (including any tendered shares or exchanged shares) on the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to close of business on the date of the Expiration Time by a fraction:

(i) the numerator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, and

(ii) the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender offer or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares



deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) on the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time.

Such reduction (if any) shall become effective immediately prior to the opening of business on the day following the Expiration Time. In the event

that the Company is obligated to purchase shares pursuant to any such tender offer or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender offer or exchange offer had not been made. If the application of this Section 10.04(f) to any tender offer or exchange offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer or exchange offer under this Section 10.04(f).

(g) For purposes of this Section 10.04, the following terms shall have the meanings indicated:

(1) "Current Market Price" shall mean the average of the daily Closing Prices per share of Common Stock for the ten consecutive Trading Days immediately prior to the date in question; provided, however, that if:

(i) the "ex" date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 10.04(a), (b), (c), (d), (e) or (f) occurs during such ten consecutive Trading Days, the Closing Price for each Trading Day prior to the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the same fraction by which the Conversion Price is so required to be adjusted as a result of such other event;

(ii) the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 10.04(a), (b), (c), (d), (e) or (f) occurs on or after the "ex" date for the issuance or distribution requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event; and

(iii) the "ex" date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment required pursuant to clause (i) or (ii) of this proviso, the Closing Price for each Trading Day on or after such "ex" date shall be adjusted by adding thereto the amount of any cash and the fair market



value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 10.04(d) or (f), whose determination shall be conclusive and set forth in a Board Resolution) of the evidences of indebtedness, shares of capital stock or assets being distributed applicable to one share of Common Stock as of the close of business on the day before such "ex" date.

For purposes of any computation under Section 10.04(f), the Current Market Price of the Common Stock on any date shall be deemed to be the average of the daily Closing Prices per share of Common Stock for such day and the next two succeeding Trading Days; provided, however, that if the "ex" date for any event (other than the tender offer requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 10.04(a), (b), (c), (d), (e) or (f) occurs on or after the Expiration Time for the tender or exchange offer requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event. For purposes of this paragraph, the term "ex" date, when used:

(A) with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution;

(B) with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and

(C) with respect to any tender or exchange offer, means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time of such offer.

Notwithstanding the foregoing, whenever successive adjustments to the

Conversion Price are called for pursuant to this Section 10.04, such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section 10.04 and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

(2) "fair market value" shall mean the amount which a willing buyer would pay a willing seller in an arm's length transaction.

(3) "Record Date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for



determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(h) The Company may make such reductions in the Conversion Price, in addition to those required by Section 10.04(a), (b), (c), (d), (e) or (f), as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least 20 days and the reduction is irrevocable during the period and the Board of Directors determines in good faith that such reduction would be in the best interests of the Company, which determination shall be conclusive and set forth in a Board Resolution. Whenever the Conversion Price is reduced pursuant to the preceding sentence, the Company shall mail to the Trustee and each Holder at the address of such Holder as it appears in the Register a notice of the reduction at least 15 days prior to the date the reduced Conversion Price takes effect, and such notice shall state the reduced Conversion Price and the period during which it will be in effect.

(i) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Price then in effect; provided, however, that any adjustments which by reason of this Section 10.04(i) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article 10 shall be made by the Company and shall be made to the nearest cent or to the nearest one hundredth of a share, as the case may be. No adjustment need be made for a change in the par value or no par value of the Common Stock.

(j) In any case in which this Section 10.04 provides that an adjustment shall become effective immediately after a Record Date for an event, the Company may defer until the occurrence of such event (i) issuing to the Holder of any Note converted after such Record Date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 10.03 hereof.

(k) For purposes of this Section 10.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.



(l) If the distribution date for the rights provided in the Company's rights agreement, if any, occurs prior to the date a Note is converted, the Holder of the Note who converts such Note after the distribution date is not entitled to receive the rights that would otherwise be attached (but for the date of conversion) to the shares of Common Stock received upon such conversion; provided, however, that an adjustment shall be made to the Conversion Price pursuant to Section 10.04(b) as if the rights were being distributed to the common stockholders of the Company immediately prior to such conversion. If such an adjustment is made and the rights are later redeemed, invalidated or terminated, then a corresponding reversing adjustment shall be made to the Conversion Price, on an equitable basis, to take account of such event.

SECTION 10.05 Notice of Adjustments of Conversion Price. Whenever the

Conversion Price is adjusted as herein provided (other than in the case of an adjustment pursuant to the second paragraph of Section 10.04(h) for which the notice required by such paragraph has been provided), the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the adjusted Conversion Price and showing in reasonable detail the facts upon which such adjustment is based. Promptly after delivery of such Officers' Certificate, the Company shall prepare a notice stating that the Conversion Price has been adjusted and setting forth the adjusted Conversion Price and the date on which each adjustment becomes effective, and shall mail such notice to each Holder at the address of such Holder as it appears in the Register within 20 days of the effective date of such adjustment. Failure to deliver such notice shall not effect the legality or validity of any such adjustment.

SECTION 10.06 Notice Prior to Certain Actions. In case at any time after the date hereof:

(1) the Company shall declare a dividend (or any other distribution) on its Common Stock payable otherwise than in cash out of its capital surplus or its consolidated retained earnings;

(2) the Company shall authorize the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class (or of securities convertible into shares of capital stock of any class) or of any other rights;

(3) there shall occur any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, a change in par value, a change from par value to no par value or a change from no par value to par value), or any merger, consolidation, statutory share exchange or combination to which the Company is a party and for which approval of any shareholders of the Company is required, or the sale, transfer or conveyance of all or substantially all of the assets of the Company; or

(4) there shall occur the voluntary or involuntary dissolution, liquidation or winding up of the Company;



the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of Notes pursuant to Section 4.03 hereof, and shall cause to be provided to the Trustee and all Holders in accordance with Section 12.02 hereof, at least 20 days (or 10 days in any case specified in clause (1) or (2) above) prior to the applicable record or effective date hereinafter specified, a notice stating:

(A) the date on which a record is to be taken for the purpose of such dividend, distribution, rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined, or

(B) the date on which such reclassification, merger, consolidation, statutory share exchange, combination, sale, transfer, conveyance, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, merger, consolidation, statutory share exchange, sale, transfer, dissolution, liquidation or winding up.

Neither the failure to give such notice nor any defect therein shall affect the legality or validity of the proceedings or actions described in clauses (1) through (4) of this Section 10.06.

SECTION 10.07 Company to Reserve Common Stock. The Company shall at all times use its best efforts to reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Notes, the full number of shares of fully paid and nonassessable Common Stock then issuable upon the conversion of all Notes outstanding.

SECTION 10.08 Taxes on Conversions. Except as provided in the next sentence, the Company will pay any and all taxes (other than taxes on income) and duties that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Notes pursuant hereto. A Holder delivering a Note for conversion shall be liable for and will be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Note or Notes to be converted, and no such issue or delivery shall be made

unless the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

SECTION 10.09 Covenant as to Common Stock. The Company covenants that all shares of Common Stock which may be issued upon conversion of Notes will upon issue be fully paid and nonassessable and, except as provided in Section 10.08, the Company will pay all taxes, liens and charges with respect to the issue thereof.



SECTION 10.10 Cancellation of Converted Notes. All Notes delivered for conversion shall be delivered to the Trustee to be canceled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 2.10.

SECTION 10.11 Effect of Reclassification, Consolidation, Merger or Sale. If any of following events occur, namely:

(1) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination),

(2) any merger, consolidation, statutory share exchange or combination of the Company with another corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock or

(3) any sale or conveyance of the properties and assets of the Company as, or substantially as, an entirety to any other corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock,

the Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the TIA as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) providing that such Note shall be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash) which such Holder would have been entitled to receive upon such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance had such Notes been converted into Common Stock immediately prior to such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance assuming such holder of Common Stock did not exercise its rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance (provided that, if the kind or amount of securities, cash or other property receivable upon such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("Non-Electing Share"), then for the purposes of this Section 10.11 the kind and amount of securities, cash or other property receivable upon such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance for each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 10. If, in the case of any such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, the stock or other securities and assets receivable thereupon by a holder of shares of Common Stock includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, then such



supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the repurchase rights set forth in Section 3.10 hereof.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the Register, within 20 days after execution thereof. Failure to

deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section 10.11 shall similarly apply to successive reclassifications, mergers, consolidations, statutory share exchanges, combinations, sales and conveyances.

If this Section 10.11 applies to any event or occurrence, Section 10.04 hereof shall not apply.

SECTION 10.12 Adjustment for Other Distributions. If, after the Issue Date of the Securities, the Company pays a dividend or makes a distribution to all holders of its Common Stock consisting of Capital Stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit of the Company, the Conversion Price shall be adjusted in accordance with the formula:

$$P' = P \times 1/(1 + F/M)$$

where:

P' = the adjusted Conversion Price.

P = the current Conversion Price.

M = the average of the Post-Distribution Prices of the Common Stock for the 10 trading days commencing on and including the fifth trading day after the date on which "ex-dividend trading" commences for such dividend or distribution on the principal United States exchange or market which such securities are then listed or quoted (the "Ex-Dividend Date").

F = the fair market value of the securities distributed in respect of each share of Common Stock shall mean the number of securities distributed in respect of each share of Common Stock multiplied by the average of the Post-Distribution Prices of those securities distributed for the 10 trading days commencing on and including the fifth trading day after the Ex-Dividend Date.

"Post-Distribution Price" of Capital Stock or any similar equity interest on any date means the closing per unit sale price (or, if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date for trading of such units on a "when issued" basis without due bills (or similar concept) as reported in the composite transactions for the principal United States securities exchange on which such Capital Stock or equity interest is traded or, if the Capital Stock or equity interest, as the case may be, is not listed on a United States national or regional securities exchange, as reported by the National Association of Securities Dealers Automated



Quotation System or by the National Quotation Bureau Incorporated; provided that if on any date such units have not traded on a "when issued" basis, the Post-Distribution Price shall be the closing per unit sale price (or, if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date for trading of such units on a "regular way" basis without due bills (or similar concept) as reported in the composite transactions for the principal United States securities exchange on which such Capital Stock or equity interest is traded or, if the Capital Stock or equity interest, as the case may be, is not listed on a United States national or regional securities exchange, as reported by the National Association of Securities Dealers Automated Quotation System or by the National Quotation Bureau Incorporated. In the absence of such quotation, the Company shall be entitled to determine the Post-Distribution Price on the basis of such quotations, which reflect the post-distribution value of the Capital Stock or equity interests as it considers appropriate.

SECTION 10.13 Responsibility of Trustee for Conversion Provisions. The Trustee, subject to the provisions of Section 7.01 hereof, and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Notes to determine whether any facts exist which may require any adjustment of the Conversion Price, or with respect to the nature or intent of any such adjustments when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee, subject to the provisions of Section 7.01 hereof, nor any Conversion Agent shall be accountable with respect to the validity or value (of the kind or amount) of any Common Stock, or of any other securities or property, which may at any time be issued or delivered upon the conversion of any Note; and it or they do not make any representation with respect thereto. Neither the Trustee, subject to the provisions of Section 7.01 hereof, nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of stock or share certificates or other securities or property upon the surrender of any Note for the purpose of conversion; and the Trustee, subject to the provisions of Section

7.01 hereof, and any Conversion Agent shall not be responsible or liable for any failure of the Company to comply with any of the covenants of the Company contained in this Article.

ARTICLE 11

SUBORDINATION

SECTION 11.01 Agreement to Subordinate. The Company agrees, and each Holder by accepting a Note agrees, that the Indebtedness, interest and other obligations of any kind evidenced by the Notes and this Indenture are subordinated in right of payment, to the extent and in the manner provided in this Article 11, to the prior payment in full in cash or cash equivalents of all Senior Indebtedness (whether outstanding on the date hereof or hereafter created, incurred, assumed or guaranteed), and that the subordination is for the benefit of the holders of Senior Indebtedness.

SECTION 11.02 Liquidation; Dissolution; Bankruptcy. In the event of any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relating to the Company or to its assets, or any liquidation, dissolution or other winding-up of the Company, whether voluntary or



involuntary, or any assignment for the benefit of creditors or other marshaling of assets or liabilities of the Company (except in connection with the consolidation or merger of the Company or its liquidation or dissolution following the conveyance, transfer or lease of its properties and assets substantially as an entirety upon the terms and conditions described in Article 5), the holders of Senior Indebtedness will be entitled to receive payment in full of all Senior Indebtedness, or provision shall be made for such payment in full, before the Noteholders will be entitled to receive any payment or distribution of any kind or character (other than any payment or distribution in the form of equity securities or subordinated securities of the Company or any successor obligor that, in the case of any such subordinated securities, are subordinated in right of payment to all Senior Indebtedness that may at the time be outstanding to at least the same extent as the Notes are so subordinated (such equity securities or subordinated securities hereinafter being "Permitted Junior Securities")) on account of principal of, or premium, if any, or additional interest, if any, or interest on the Notes; and any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (other than a payment or distribution in the form of Permitted Junior Securities), by set-off or otherwise, to which the Noteholders or the Trustee would be entitled but for the provisions of this Article 11 shall be paid by the liquidating trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Indebtedness or their representative or representatives ratably according to the aggregate amounts remaining unpaid on account of the Senior Indebtedness to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

SECTION 11.03 Default on Designated Senior Indebtedness. (a) No payment or distribution of any assets of the Company of any kind or character, whether in cash, property or securities (other than Permitted Junior Securities), may be made by or on behalf of the Company on account of principal of, premium, if any, or interest on the Notes or on account of the purchase, redemption or other acquisition of Notes upon the occurrence of any default in payment (whether at Stated Maturity, upon scheduled installment, by acceleration or otherwise) of principal of, premium, if any, or interest on Designated Senior Indebtedness beyond any applicable grace period (a "Payment Default") until such Payment Default shall have been cured or waived in writing or shall have ceased to exist or such Designated Senior Indebtedness shall have been discharged or paid in full in cash or cash equivalents.

(b) No payment or distribution of any assets of the Company of any kind or character, whether in cash, property or securities (other than Permitted Junior Securities), may be made by or on behalf of the Company on account of principal of, premium, if any, or interest on the Notes or on account of the purchase, redemption or other acquisition of Notes for the period specified below (a "Payment Blockage Period") upon the occurrence of any default or event of default with respect to any Designated Senior Indebtedness other than any Payment Default pursuant to which the maturity thereof may be accelerated (a "Non-Payment Default") and receipt by the Trustee of written notice thereof from the trustee or other representative of holders of Designated Senior Indebtedness.

The Payment Blockage Period will commence upon the date of receipt by the Trustee of written notice from the trustee or such other representative of the holders of the

Designated Senior Indebtedness in respect of which the Non-Payment Default exists and shall end on the earliest of:

(i) 179 days thereafter (provided that any Designated Senior Indebtedness as to which notice was given shall not theretofore have been accelerated);

(ii) the date on which such Non-Payment Default is cured, waived or ceases to exist;

(iii) the date on which such Designated Senior Indebtedness is discharged or paid in full; or

(iv) the date on which such Payment Blockage Period shall have been terminated by written notice to the Trustee or the Company from the trustee or such other representative initiating such Payment Blockage Period,

after which the Company will resume making any and all required payments in respect of the Notes, including any missed payments. In any event, not more than one Payment Blockage Period may be commenced during any period of 365 consecutive days. No Non-Payment Default that existed or was continuing on the date of the commencement of any Payment Blockage Period will be, or can be made, the basis for the commencement of a subsequent Payment Blockage Period, unless such Non-Payment Default has been cured or waived for a period of not less than 90 consecutive days subsequent to the commencement of such initial Payment Blockage Period.

SECTION 11.04 Acceleration of Notes. If payment of the Notes is accelerated because of an Event of Default, the Company shall promptly notify holders of Senior Indebtedness of the acceleration.

SECTION 11.05 When Distribution Must Be Paid Over. In the event that, notwithstanding the provisions of Sections 11.02 and 11.03, any payment or distribution of any kind or character, whether in cash, property or securities, shall be received by the Trustee or any Noteholder which is prohibited by such provisions, then and in such event such payment shall be held in trust for the benefit of, and shall be paid over and delivered by such Trustee or Noteholder to, the trustee or any other representative of holders of Senior Indebtedness, as their interest may appear, for application to Senior Indebtedness remaining unpaid until all such Senior Indebtedness has been paid in full in cash or cash equivalents after giving effect to any concurrent distribution to or for the holders of Senior Indebtedness.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform only such obligations on the part of the Trustee as are specifically set forth in this Article 11, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness, and shall not be liable to any such holders if the Trustee shall pay over or distribute to or on behalf of Noteholders or the Company or any other Person money or assets to which any holders of Senior Indebtedness shall be entitled by virtue of this Article 11, except if such payment is made as a result of the willful misconduct or gross negligence of the Trustee.



SECTION 11.06 Notice by the Company. The Company shall promptly notify the Trustee and the Paying Agent of any facts known to the Company that would cause a payment of any obligations with respect to the Notes to violate this Article 11, but failure to give such notice shall not affect the subordination of the Notes to the Senior Indebtedness as provided in this Article 11.

SECTION 11.07 Subrogation. After all Senior Indebtedness is paid in full and until the Notes are paid in full, Noteholders shall be subrogated (equally and ratably with all other Indebtedness that is equal in right of payment to the Notes) to the rights of holders of Senior Indebtedness to receive distributions applicable to Senior Indebtedness to the extent that distributions otherwise payable to the Noteholders have been applied to the payment of Senior Indebtedness. A distribution made under this Article 11 to holders of Senior Indebtedness that otherwise would have been made to Noteholders is not, as between the Company and Noteholders, a payment by the Company of the Notes.

SECTION 11.08 Relative Rights. This Article 11 defines the relative rights of Holders and holders of Senior Indebtedness. Nothing in this Indenture shall: (i) impair, as between the Company and Holders, the obligation of the

Company, which is absolute and unconditional, to pay principal of and interest on the Notes in accordance with their terms; (ii) affect the relative rights of Holders and creditors of Holdings other than their rights in relation to holders of Senior Indebtedness; or (iii) prevent the Trustee or any Holder from exercising its available remedies upon a Default or Event of Default, subject to the rights of holders and owners of Senior Indebtedness to receive distributions and payments otherwise payable to Holders of Notes. If the Company fails because of this Article 11 to pay principal of or interest on a Note on the Stated Maturity date, the failure is still a Default or Event of Default.

SECTION 11.09 Subordination May Not Be Impaired by the Company. No right of any holder of Senior Indebtedness to enforce the subordination of the Indebtedness evidenced by the Notes shall be impaired by any act or failure to act by the Company or any Holder or by the failure of the Company or any Holder to comply with this Indenture.

Without in any way limiting the generality of this Section 11.09, 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, without incurring responsibility to the Trustee or the Holders and without impairing or releasing the subordination provided in this Article 11 or the obligations hereunder of the Holders 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 or alter, Senior Indebtedness, the Senior Credit Agreement or any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding or secured; (b) sell, exchange, release, foreclose against 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 Subsidiary thereof or any other Person.

SECTION 11.10 Distribution or Notice to Representative. Whenever a distribution is to be made or a notice given to holders of any Senior Indebtedness, the distribution may be made and the notice given to their representative.



Upon any payment or distribution of assets of the Company referred to in this Article 11, the Trustee and the Holders of Notes shall be entitled to rely upon any order or decree made by any court of competent jurisdiction or upon any certificate of such representative(s) or of the liquidating trustee or agent or other Person making any distribution to the Trustee or to the Holders for the purpose of ascertaining the Persons entitled to participate in such distribution, all holders of the Senior Indebtedness and other Indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 11.

SECTION 11.11 Rights of Trustee and Paying Agent. Notwithstanding the provisions of this Article 11 or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment or distribution by the Trustee, and the Trustee and the Paying Agent may continue to make payments on the Notes, unless a Responsible Officer of the Trustee shall have received at its Corporate Trust Office at least three Business Days prior to the date of such payment written notice of facts that would cause the payment of any obligations with respect to the Notes to violate this Article 11. Only the Company or representative may give the notice. Nothing in this Article 11 shall impair the claims of, or payments to, the Trustee under or pursuant to Section 7.06.

The Trustee in its individual or any other capacity may hold Senior Indebtedness with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights.

## ARTICLE 12

## MISCELLANEOUS

SECTION 12.01 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 shall control.

SECTION 12.02 Notices. Any request, demand, authorization, notice, waiver, consent or communication shall be in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission (confirmed by guaranteed overnight courier) to the following facsimile numbers:

if to the Company:

ResMed Inc.
14040 Danielson Street
Poway, CA 92064

Telephone No. (858) 746-2212
Facsimile No. (858) 746-2830
Attention: General Counsel



if to the Trustee:

American Stock Transfer & Trust Company
59 Maiden Lane
New York, New York 10038
Attention: Corporate Trust Department

Telephone No. (718) 921-8209
Facsimile No. (718) 331-1852

The Company or the Trustee by notice given to the other in the manner provided above may designate additional or different addresses for subsequent notices or communications.

Any notice or communication given to a Noteholder shall be mailed to the Noteholder, by first-class mail, postage prepaid, at the Noteholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

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

If the Company mails a notice or communication to the Noteholders, it shall mail a copy to the Trustee and each Registrar, Paying Agent, Conversion Agent or co-registrar.

SECTION 12.03 Communication by Holders with Other Holders.

Noteholders may communicate pursuant to TIA Section 312(b) with other Noteholders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar, the Paying Agent, the Conversion Agent and anyone else shall have the protection of TIA Section 312(c).

SECTION 12.04 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

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

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

SECTION 12.05 Statements Required in Certificate or Opinion. Each

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

(1) a statement that each person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;



(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers' Certificate or Opinion of Counsel are based;

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

(4) a statement that, in the opinion of such person, such covenant or condition has been complied with.

SECTION 12.06 Separability Clause. In case any provision in this

Indenture or in the Notes 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 12.07 Rules by Trustee, Paying Agent, Conversion Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of Noteholders. The Registrar, Conversion Agent and the Paying Agent may make reasonable rules for their functions.

SECTION 12.08 Legal Holidays. A "Legal Holiday" is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on such date is a payment in respect of the Notes, no interest, if any, shall accrue for the intervening period.

SECTION 12.09 GOVERNING LAW. THIS INDENTURE AND THE NOTES WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 12.10 No Recourse Against Others. A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Noteholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Notes.

SECTION 12.11 Successors. All agreements of the Company in this Indenture and the Notes shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

SECTION 12.12 Multiple 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. One signed copy is enough to prove this Indenture.



IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Indenture on behalf of the respective parties hereto as of the date first above written.

RESMED INC.

By: /s/ Peter C. Farrell
Name: Peter C. Farrell
Title: Chairman of the Board,
President and Chief Executive officer

AMERICAN STOCK TRANSFER &
TRUST COMPANY, as Trustee

By: /s/ Herbert J. Lemmer
Name: Herbert J. Lemmer
Title: Vice President

EXHIBIT A-1

[FORM OF FACE OF GLOBAL NOTE]

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

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT

NOT IN PART, TO NOMINEES OF THE DEPOSITORY TRUST COMPANY, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE TWO OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

THIS NOTE AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE OR FOREIGN SECURITIES LAWS. NEITHER THIS NOTE, THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF WITHIN THE UNITED STATES OR TO, OR FOR THE BENEFIT OF, U.S. PERSONS, IN THE ABSENCE OF SUCH REGISTRATION UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT, OR (B) IT IS NOT A "U.S. PERSON" AS DEFINED IN RULE 902 OF REGULATION S AND IS ACQUIRING THIS NOTE AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S; (2) AGREES THAT IT WILL NOT PRIOR TO THE DATE THAT IS TWO YEARS AFTER THE LATER OF THE INITIAL ISSUANCE OF THE NOTE EVIDENCED HEREBY AND THE LAST DATE ON WHICH RESMED INC. (THE "COMPANY") OR ANY "AFFILIATE" (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY WAS THE OWNER OF THE NOTE (THE "RESTRICTION TERMINATION DATE") RESELL OR OTHERWISE TRANSFER THE NOTE EVIDENCED HEREBY OR THE COMMON STOCK ISSUED UPON CONVERSION OF SUCH NOTE EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B)



FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A INSIDE THE UNITED STATES, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 904 OF REGULATION S, (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM REGISTRATION PROVIDED UNDER THE SECURITIES ACT (IF AVAILABLE), OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE NOTE EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(E) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THE NOTE EVIDENCED HEREBY BEFORE THE RESTRICTION TERMINATION DATE (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(E) ABOVE), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH IN A TRANSFER CERTIFICATE RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS NOTE TO AMERICAN STOCK TRANSFER & TRUST COMPANY, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE). THE HOLDER MUST, PRIOR TO SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(E) ABOVE), FURNISH TO AMERICAN STOCK TRANSFER & TRUST COMPANY, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON ANY TRANSFER OF THE NOTE EVIDENCED HEREBY PURSUANT TO CLAUSE 2(E) ABOVE OR UPON OR AFTER THE RESTRICTION TERMINATION DATE.

[THE FOREGOING LEGEND MAY BE REMOVED FROM THIS NOTE ON SATISFACTION OF THE CONDITIONS SPECIFIED IN THE INDENTURE.]



RESMED INC.
4% Convertible Subordinated Notes due 2006

CUSIP NO. _____

[If the Note is a Regulation S Global Note, delete the reference to CUSIP NO. and replace it with:

ISIN NO. _____

No.:

Issue Date:

RESMED INC., a Delaware corporation, promises to pay to Cede & Co. or registered assigns, the principal sum of [_____] DOLLARS ($[_____]) on [_____], 2006.

This Note shall bear interest as specified on the other side of this Note. This Note is convertible as specified on the other side of this Note.

Additional provisions of this Note are set forth on the other side of this Note.

Dated: _____ RESMED INC.

By_____
Name:
Title:

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION

[_____],
as Trustee, certifies that this
is one of the Notes referred
to in the within-mentioned Indenture (as
defined on the other side of this Note).

By_____
Authorized Signatory

Dated:_____



[FORM OF REVERSE SIDE OF NOTE]

4% Convertible Subordinated Note due 2006

Capitalized terms used herein but not defined shall have the meanings assigned to them in the Indenture unless otherwise indicated.

1. Cash Interest.

The Company promises to pay interest at the Interest Rate in cash on the principal amount of this Note at the rate per annum of 4%. The Company will pay cash interest semiannually in arrears on June 20 and December 20 of each year (each an "Interest Payment Date") to Holders of record at the close of business on June 5 and December 5 (whether or not a business day) (each a "Regular Record Date"), as the case may be, immediately preceding such Interest Payment Date. Cash interest on the Notes will accrue from the most recent date to which interest has been paid or duly provided or, if no interest has been paid, from the Issue Date. Cash interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company shall pay cash interest on overdue principal, or if shares of Common Stock (or cash in lieu of fractional shares) in respect of a conversion of this Note in accordance with the terms of Article 10 of the Indenture are not delivered when due, at the rate borne by the Notes plus 1% per annum, and it shall pay interest in cash on overdue installments of cash interest at the same rate to the extent lawful. All such overdue cash interest shall be payable on demand.

In accordance with the terms of the Registration Rights Agreement, during the first 90 days following a Registration Default (as defined in the Registration Rights Agreement), the Interest Rate borne by the Notes shall be increased by 0.25% on:

(A) the later of (i) the 91/st/ day after the earliest date of original issuance of any of the Notes and (ii) October 2, 2001, if the Shelf Registration Statement is not filed with the SEC; or

(B) the 151/st/ day following the earliest date of original issuance of any of the Notes, if the Shelf Registration Statement is not declared effective; or

(C) the day after the fifth business day after the Shelf Registration Statement, previously declared effective, ceases to be effective or fails to be usable, if a post-effective amendment (or report filed with the Exchange Act) that cures the Shelf Registration Statement is not filed during such five Business Day period; or

(D) the day after the 45/th/ or 90/th/ day, as the case may be, of any period that the prospectus contained in the Shelf Registration Statement has been suspended, if such suspension has not been terminated.

From and after the 91/st/ day following such Registration Default, the Interest Rate borne by the Notes shall be increased by 0.50%. In no event shall the Interest Rate borne by the Notes be increased by more than 0.50%



Any amount of additional interest will be payable in cash semiannually, in arrears, on each Interest Payment Date and will cease to accrue on the date the

Registration Default is cured. The Holder of this Security is entitled to the benefits of the Registration Rights Agreement.

2. Method of Payment.

Subject to the terms and conditions of the Indenture, the Company will make payments in respect of the principal of, premium, if any, and cash interest on this Note and in respect of Redemption Prices and Change in Control Repurchase Prices to Holders who surrender Notes to a Paying Agent to collect such payments in respect of the Notes. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check payable in such money. A holder of Notes with an aggregate principal amount in excess of $5,000,000 will be paid by wire transfer in immediately available funds at the election of such holder. Any payment required to be made on any day that is not a Business Day will be made on the next succeeding Business Day.

3. Paying Agent, Conversion Agent and Registrar.

Initially, American Stock Transfer & Trust Company (the "Trustee"), will act as Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent, Registrar or co-registrar without notice, other than notice to the Trustee except that the Company will maintain at least one Paying Agent in the State of New York, City of New York, Borough of Manhattan, which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent, Registrar or co-registrar.

4. Indenture.

The Company issued the Notes under an Indenture dated as of June 20, 2001 (the Indenture"), between the Company and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as in effect from time to time (the "TIA"). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Noteholders are referred to the Indenture and the TIA for a statement of those terms.

The Notes are general unsecured obligations of the Company limited to $180,000,000 aggregate principal amount (subject to Section 2.07 of the Indenture). The Indenture does not limit other indebtedness of the Company, secured or unsecured.

5. Provisional Redemption.

The Notes may be redeemed at the election of the Company, as a whole or from time to time in part on any date, upon not less than 20 nor more than 60 days' notice, at any time prior to June 20, 2004, at a Redemption Price equal to $1,000 per $1,000 principal amount of the Notes plus accrued and unpaid interest, if any, to but excluding the Provisional Redemption Date if (i) the Closing Price of the Common Stock has exceeded 150% of the Conversion Price (as such may be adjusted from time to time) then in effect for at least 20 Trading Days in any consecutive



30-Trading Day period ending on the Trading Day prior to the Notice Date and (ii) a registration statement covering resales of the Notes and Common Stock issuable upon the conversion thereof is effective and available for use and is expected to remain effective for the 30 days following the Provisional Redemption Date.

Upon any such Provisional Redemption, the Company shall make the Make-Whole Payment with respect to the Notes called for redemption to Holders on the Notice Date in an amount equal to $166.67 per $1,000 principal amount of the Notes, less the amount of any interest actually paid on such Notes prior to the Provisional Redemption Date. The Company shall make the Make-Whole Payment in cash on all Notes called for Provisional Redemption, including those Notes converted into Common Stock between the Notice Date and the Provisional Redemption Date.

6. Optional Redemption.

Except as provided above, this Note is not redeemable prior to June 22, 2004. This Note may be redeemed in whole or in part, upon not less than 30 nor more than 60 days' notice, at any time on or after June 22, 2004, at the option of the Company, at the redemption price (expressed as percentages of the principal amount) set forth below if redeemed during the periods below, plus any interest accrued but not paid prior to the Optional Redemption Date, if the Closing Price of the Common Stock has exceeded 130% of the Conversion Price (as defined in Article 10 of the Indenture and as such may be adjusted from time to time) then in effect for at least 20 Trading Days in any consecutive 30-Trading Day period ending on the Trading Day prior to the date of mailing of the notice of optional redemption pursuant to Section 3.05 of the Indenture.

<TABLE>
<CAPTION>

| During the Twelve Months Commencing | Redemption Prices |
|---|---|
| <S> | <C> |
| June 22, 2004 through June 19, 2005 | 101.6% |
| Thereafter | 100.8% |

</TABLE>

If fewer than all the Notes are to be redeemed, the Trustee shall select the particular Notes to be redeemed from the Outstanding Notes by the methods as provided in the Indenture. If any Note selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Note so selected, the converted portion of such Note shall be deemed to be the portion selected for redemption (provided, however, that the Holder of such Note so converted and deemed redeemed shall not be entitled to any additional interest payment as a result of such deemed redemption than such Holder would have otherwise been entitled to receive upon conversion of such Note). Notes which have been converted during a selection of Notes to be redeemed may be treated by the Trustee as Outstanding for the purpose of such selection.

On and after the Redemption Date, interest ceases to accrue on Notes or portions of Notes called for redemption, unless the Company defaults in the payment of the Redemption Price and accrued and unpaid interest.



Notice of redemption will be given by the Company to the Holders as provided in the Indenture.

No sinking fund is provided for the Notes.

7. Repurchase by the Company at the Option of the Holder.

If a Change in Control occurs, the Holder, at the Holder's option, shall have the right, in accordance with the provisions of the Indenture, to require the Company to repurchase the Notes (or any portion of the principal amount hereof that is at least $1,000 or an integral multiple thereof, provided that the portion of the principal amount of this Note to be outstanding after such repurchase is at least equal to $1,000) at the Change in Control Repurchase Price in cash, plus any interest accrued and unpaid to the Change in Control Repurchase Date.

Subject to the conditions provided in the Indenture, the Company may elect to pay the Change in Control Repurchase Price by delivering a number of shares of Common Stock equal to (i) the Change in Control Repurchase Price divided by (ii) 95% of the average of the Closing Prices per share for the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the Change in Control Repurchase Date.

No fractional shares of Common Stock will be issued upon repurchase of any Notes. Instead of any fractional share of Common Stock which would otherwise be issued upon conversion of such Notes, the Company shall pay a cash adjustment as provided in the Indenture.

A Change in Control Repurchase Notice will be given by the Company to the Holders as provided in the Indenture. To exercise a repurchase right, a Holder must deliver to the Trustee a written notice as provided in the Indenture.

Holders have the right to withdraw any Change in Control Repurchase Notice by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

8. Notice of Redemption.

Notice of a provisional redemption will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Notes to be redeemed at the Holder's registered address. Notice of an optional redemption will be mailed at least 20 days but not more than 60 days before the Redemption Date to each Holder of Notes to be redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price of all Notes (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, immediately after such Redemption Date interest ceases to accrue on such Notes or portions thereof. Notes in denominations larger than $1,000 of principal amount may be redeemed in part but only in integral multiples of $1,000 of principal amount.

9. Conversion.

Subject to the next two succeeding sentences, a Holder of a Note may convert it into Common Stock of the Company at any time before the close of business on June 20, 2006. If the



Note is called for redemption, the Holder may convert it at any time before the close of business on the Business Day preceding the Redemption Date. A Note in respect of which a Holder has delivered a Change in Control Repurchase Notice exercising the option of such Holder to require the Company to purchase such Note may be converted only if such notice of exercise is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Price shall be initially equal to $60.60 per share of Common Stock, subject to adjustment in certain events described in the Indenture. The Company shall pay a cash adjustment as provided in the Indenture in lieu of any fractional share of Common Stock.

To convert a Note, a Holder must (1) complete and manually sign the conversion notice below (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent, (2) surrender the Note to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Conversion Agent, the Company or the Trustee and (4) pay any transfer or similar tax, if required.

10. Conversion Arrangement on Call for Redemption.

Any Notes called for redemption, unless surrendered for conversion before the close of business on the Redemption Date, may be deemed to be purchased from the Holders of such Notes at an amount not less than the Redemption Price, by one or more investment bankers or other purchasers who may agree with the Company to purchase such Notes from the Holders, to convert them into Common Stock of the Company and to make payment for such Notes to the Trustee in trust for such Holders.

11. Denominations; Transfer; Exchange.

The Notes are in fully registered form, without coupons, in denominations of $1,000 of principal amount and integral multiples of $1,000. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Notes selected for redemption (except, in the case of a Note to be redeemed in part, the portion of the Note not to be redeemed) or any Notes in respect of which a Change in Control Repurchase Notice has been given and not withdrawn (except, in the case of a Note to be purchased in part, the portion of the Note not to be purchased) or any Notes for a period of 15 days before the mailing of a notice of redemption of Notes to be redeemed.

12. Persons Deemed Owners.

The registered Holder of this Note may be treated as the owner of this Note for all purposes.

13. Unclaimed Money or Notes.

The Trustee and the Paying Agent shall return to the Company upon written request any money or Notes held by them for the payment of any amount with respect to the Notes that



remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the money or Notes must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

14. Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Notes may be amended with the written consent of the Holders of at least a majority in aggregate principal amount of the Notes at the time outstanding and (ii) certain Defaults may be waived with the written consent of the Holders of a majority in aggregate principal amount of the Notes at the time outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Noteholder, the Company and the Trustee may amend the Indenture or the Notes to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 of the Indenture, to provide for uncertificated Notes in addition to or in place of certificated Notes or to make any change that does not adversely affect the rights of any Noteholder, or to comply with any requirement of the SEC in connection with the qualification of the Indenture under the TIA.

15. Defaults and Remedies.

Under the Indenture, Events of Default include (1) the Company fails to pay when due the principal of or premium, if any, on any of the Notes at maturity, upon redemption or exercise of a repurchase right or otherwise, whether or not such payment is prohibited by Article 11 of the Indenture; (2) the Company fails to pay an installment of interest (including liquidated damages, if any) on any of the Notes that continues for 30 days after the date when due, whether or not such payment is prohibited by Article 11 of the Indenture; (3) the Company fails to deliver shares of Common Stock, together with cash in lieu of fractional shares, when such Common Stock or cash in lieu of fractional shares is required to be delivered upon conversion of a Note and such failure continues for 10 days after such delivery date; (4) the Company fails to perform or observe any other term, covenant or agreement contained in the Notes or the Indenture for a period of 60 days after written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes then outstanding; (5) (A) one or more defaults in the payment of principal of or premium, if any, on any of the Company's Indebtedness aggregating $5.0 million or more, when the same becomes due and payable at the scheduled maturity thereof, and such default or defaults shall have continued after any applicable grace period and shall not have been cured or waived within a 30-day period after the date of notice of such default or (B) any of the Company's Indebtedness aggregating $5.0 million or more shall have been accelerated or otherwise declared due and payable, or required to be prepaid or repurchased (other than by regularly scheduled required prepayment) prior to the scheduled maturity thereof and such acceleration is not rescinded or annulled within a 30-day period after the date of such acceleration; and (6) certain events of bankruptcy, insolvency or reorganization with respect to the Company or any Significant Subsidiary or any Subsidiaries of the Company which in the aggregate would constitute a Significant Subsidiary. If an Event of Default (other than an Event of Default specified in clause (6) or (7) of Section 6.01 of the Indenture) occurs and is continuing, the Trustee, or the Holders of at least 25% in aggregate principal amount of the Notes at the time outstanding, may declare all the Notes to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which



will result in the Notes becoming due and payable immediately upon the occurrence of such Events of Default.

Noteholders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives reasonable indemnity or security. Subject to certain limitations, Holders of a majority in aggregate principal amount of the Notes at the time outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Noteholders notice of any continuing Default (except a Default in payment of amounts specified in clause (1) or (2) above) if it determines that withholding notice is in their interests.

16. Subordination

The payment of principal of, premium, if any, and interest on the Notes will be subordinated in right of payment, as set forth in the Indenture, to the prior payment in full in cash or cash equivalents of all Senior Indebtedness whether outstanding on the date of the Indenture or thereafter incurred.

17. Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

18. No Recourse Against Others.

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Noteholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

19. Authentication.

This Note shall not be valid until an authorized signatory of the Trustee manually signs the Trustee's Certificate of Authentication on the other side of this Note.

20. Abbreviations.

Customary abbreviations may be used in the name of a Noteholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the

entireties), JT TEN (=joint tenants with right of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).



21. GOVERNING LAW.

THE INDENTURE AND THIS NOTE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

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The Company will furnish to any Noteholder upon written request and without charge a copy of the Indenture which has in it the text of this Note in larger type. Requests may be made to:

ResMed Inc.
14040 Danielson Street
Poway, CA 92064
Attention: General Counsel



ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

_____
_____
(Insert assignee's soc. sec. or tax ID no.)

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

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

CONVERSION NOTICE

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

[_]

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

$_____

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

_____
_____
(Insert other person's sec. or tax ID no.)

_____
_____
_____
_____
(Print or type other person's name, address and zip code)

Date: _____ Your Signature:_____

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



EXHIBIT A-2

[Form of Certificated Note]

THIS NOTE AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS NOTE, THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, AGREES TO OFFER, SELL, OR OTHERWISE TRANSFER SUCH NOTE, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE"), WHICH IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH RESMED INC. (THE "COMPANY") OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS NOTE (OR ANY PREDECESSOR OF SUCH NOTE) ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THIS NOTE AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED

INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (D) IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S AND THE TRUSTEE'S RIGHTS PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (C), (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS NOTE IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

[THE FOREGOING LEGEND MAY BE REMOVED FROM THIS NOTE ON SATISFACTION OF THE CONDITIONS SPECIFIED IN THE INDENTURE.]



RESMED INC.
4% Convertible Subordinated Notes due 2006

CUSIP NO. _____

[If the Note is a Regulation S Global Note, delete the reference to CUSIP NO. and replace it with:

ISIN NO. _____

No.:

Issue Date:

RESMED INC., a Delaware corporation, promises to pay to Cede & Co. or registered assigns, the principal sum of [_____] DOLLARS ($[_____]) on [_____], 2006.

This Note shall bear interest as specified on the other side of this Note. This Note is convertible as specified on the other side of this Note.

Additional provisions of this Note are set forth on the other side of this Note.

Dated: RESMED INC.

By_____
Name:
Title:

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION

[_____],
as Trustee, certifies that this
is one of the Notes referred
to in the within-mentioned Indenture (as
defined on the other side of this Note).

By_____
Authorized Signatory

Dated: _____



EXHIBIT B-1

Transfer Certificate

In connection with any transfer of any of the Notes within the period prior to the expiration of the holding period applicable to the sales thereof under Rule 144(k) under the Securities Act of 1933, as amended (the "Securities Act") (or any successor provision), the undersigned registered owner of this Note hereby certifies with respect to $_____ principal amount of the above-captioned Notes presented or surrendered on the date hereof (the "Surrendered Notes") for registration of transfer, or for exchange or conversion where the Notes issuable upon such exchange or conversion are to be registered in a name other than that of the undersigned registered owner (each such transaction being a "transfer"), that such transfer complies with the restrictive legend set forth on the face of the Surrendered Notes for the reason checked below:

[_] A transfer of the Surrendered Notes is made to the Company or any subsidiaries; or

[_] The transfer of the Surrendered Notes complies with Rule 144A under the U.S. Securities Act of 1933, as amended (the "Securities Act"); or

[_] The transfer of the Surrendered Notes is to an institutional accredited investor, as described in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act; or

[_] The transfer of the Surrendered Notes is pursuant to an effective registration statement under the Securities Act, or

[_] The transfer of the Surrendered Notes is pursuant to an offshore transaction in accordance with Rule 904 of Regulation S under the Securities Act; or

[_] The transfer of the Surrendered Notes is pursuant to another available exemption from the registration requirement of the Securities Act.

and unless the box below is checked, the undersigned confirms that, to the undersigned's knowledge, such Notes are not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act (an "Affiliate").

[_] The transferee is an Affiliate of the Company.

DATE: _____ _____
Signature(s)

(If the registered owner is a corporation, partnership or fiduciary, the title of the Person signing on behalf of such registered owner must be stated.)



EXHIBIT B-2

Form of Letter to Be Delivered by Accredited Investors

ResMed Inc.
14040 Danielson Street
Poway, CA 92064
Attention: General Counsel

American Stock Transfer & Trust Company
59 Maiden Lane
New York, NY 10038
Attention: Corporate Trust Department
Telephone No. (718) 921-8209
Facsimile No. (718) 331-1852

Dear Ladies and Gentlemen:

We are delivering this letter in connection with the proposed transfer of $_____ principal amount of the 4% Convertible Subordinated Notes due 2006 (the "Notes") of ResMed Inc. (the "Company"), which are convertible into shares of the Company's Common Stock, $0.04 par value per share (the "Common Stock").

We hereby confirm that:

(i) we are an "accredited investor" within the meaning of Rule 501(a)(1), (2) or (3) under the Securities Act of 1933, as amended (the "Securities Act"), or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a)(1), (2) or (3) under the Securities Act (an "Institutional Accredited Investor");

(ii) the purchase of Notes by us is for our own account or for the account of one or more other Institutional Accredited Investors or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a)(7) under the Securities Act and for each of which we exercise sole investment discretion or (B) we are a "bank," within the meaning of Section 3(a)(2) of the Securities Act, or a "savings and loan association" or other institution described in Section 3(a)(5)(A) of the Securities Act that is acquiring Notes fiduciary for the account of one or more institutions for which we exercise sole investment discretion;

(iii) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing Notes; and

(iv) we are not acquiring Notes with a view to distribution thereof or with any present intention of offering or selling Notes or the

Common Stock issuable upon conversion thereof, except as permitted below; provided that the disposition of our



property and property of any accounts for which we are acting as fiduciary shall remain at all times within our control.

We understand that the Notes were originally offered and sold in a transaction not involving any public offering within the United States within the meaning of the Securities Act and that the Notes and the shares of Common Stock (the "Notes") issuable upon conversion thereof have not been registered under the Securities Act, and we agree, on our own behalf and on behalf of each account for which we acquire any Notes, that if in the future we decide to resell or otherwise transfer such Notes prior to the date (the "Resale Restriction Termination Date") which is two years after the later of the original issuance of the Notes and the last date on which the Company or an affiliate of the Company was the owner of the Note, such Notes may be resold or otherwise transferred only (i) to the Company or any subsidiary thereof, or (ii) for as long as the Notes are eligible for resale pursuant to Rule 144A, to a person it reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) that purchases for its own account or for the account of a qualified institutional buyer to which notice is given that the transfer is being made in reliance on Rule 144A, or (iii) to an Institutional Accredited Investor that is acquiring the Note for its own account, or for the account of such Institutional Accredited Investor for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act, or (iv) pursuant to another available exemption from registration under the Securities Act (if applicable), or (v) pursuant to a registration statement which has been declared effective under the Securities Act and, in each case, in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Notes. We further agree to provide any person purchasing any of the Notes other than pursuant to clause (v) above from us a notice advising such purchaser that resales of such Notes are restricted as stated herein. We understand that the trustee or the transfer agent, as the case may be, for the Notes will not be required to accept for registration of transfer any Notes pursuant to (iii) or (iv) above except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with. We further understand that any Notes will be in the form of definitive physical certificates and that such certificates will bear a legend reflecting the substance of this paragraph other than certificates representing Notes transferred pursuant to clause (v) above.

We acknowledge that the Company, others and you will rely upon our confirmations, acknowledgments and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate and complete.



THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

_____
(Name of Purchaser)

By:_____
Name:
Title:
Address:



EXHIBIT B-3

Form of Letter to Be Delivered in Connection With Regulation S Transfers

ResMed Inc.
14040 Danielson Street
Poway, CA 92064
Attention: General Counsel

American Stock Transfer & Trust Company
59 Maiden Lane
New York, NY 10038
Attention: Corporate Trust Department
Dear Ladies and Gentlemen:

We are delivering this letter of representation in connection with our purchase of 4% Convertible Subordinated Debentures Due 2006 (the "Notes") of ResMed Inc., as described in the Offering Memorandum relating to such offering.

We hereby confirm that:

1. we are not a "U.S. person" within the meaning of Rule 902(k) of Regulation S under the United States Securities Act of 1933 (the "Securities Act");

2. the Notes are not being purchased on behalf of or for the account or benefit of a "U.S. person;"

3. we agree to resell such Notes only in accordance with the provisions of Rules 901 through 905 of Regulation S, pursuant to registration under the Securities Act, or pursuant to an available exemption from registration consistent with the requirements of the Indenture, including the requirement that Debentures generally be held only as interests in the Global Note; and

4. we agree not to engage in hedging transactions with regard to the Notes unless in compliance with the Securities Act.

We acknowledge that you, the Company, the Transfer Agent for the Notes and others will rely upon our representations set forth herein, and we agree to notify you promptly in writing if any of our representations herein ceases to be accurate and complete.



THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

_____
(Name of Purchaser)

By:_____
Name:
Title:
Address:

EXHIBIT 4.4
EXECUTION COPY

# REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT is made and entered into as of June 20, 2001 by and between ResMed Inc., a Delaware corporation (the "Company"), and Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Banc Alex. Brown Inc., William Blair & Company, L.L.C., Macquarie Bank Limited and UBS Warburg LLC (collectively, the "Initial Purchasers") pursuant to the Purchase Agreement, dated as of June 14, 2001 (the "Purchase Agreement"), between the Company and the Initial Purchasers. In order to induce the Initial Purchasers to enter into the Purchase Agreement, the Company has agreed to provide the registration rights set forth in this Agreement. The execution of this Agreement is a condition to the closing under the Purchase Agreement.

The Company agrees with the Initial Purchasers, (i) for the benefit of the Initial Purchasers and (ii) for the benefit of the beneficial owners (including the Initial Purchasers) from time to time of the Securities (as defined herein) and the beneficial owners from time to time of the Underlying Common Stock (as defined herein) issued upon conversion of the Securities (each of the foregoing a "Holder" and together the "Holders"), as follows:

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

"Affiliate" means, with respect to any specified person, an "affiliate," as defined in Rule 144, of such person.

"Amendment Effectiveness Deadline Date" has the meaning specified in Section 2(d) hereof.

"Applicable Conversion Price" means the Principal Amount as of such date of determination divided by the Conversion Rate in effect as of such date of determination or, if no Securities are then outstanding, the Conversion Rate that would be in effect were Securities then outstanding.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

"Common Stock" means any shares of Common Stock, par value $0.004 per share, of the Company and any other shares of common stock as may constitute "Common Stock" for purposes of the Indenture, including the Underlying Common Stock.

"Conversion Rate" has the meaning assigned to that term in the Indenture.

"Damages Accrual Period" has the meaning specified in Section 2(e) hereof.

"Damages Payment Date" means each June 20 and December 20 in the case of Securities and the Underlying Common Stock.

"Deferral Notice" has the meaning specified in Section 3(i) hereof.

"Deferral Period" has the meaning specified in Section 3(i) hereof.

"Effectiveness Deadline Date" has the meaning specified in Section 2(a) hereof.

"Effectiveness Period" means the period of two years from the Issue Date or such shorter period that will terminate upon the earliest of the following: (A) when all the Securities covered by the Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement, (B) when all shares of Common Stock issued upon conversion of any such Securities that had not been sold pursuant to the Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement and (C) when, in the written opinion of counsel to the Company, which opinion may be rendered by the

Company's general counsel, all outstanding Registrable Securities held by persons which are not affiliates of the Company may be resold without registration under the Securities Act pursuant to Rule 144(k) under the Securities Act or any successor provision thereto.

"Event" has the meaning specified in Section 2(e) hereof.

"Event Date" has the meaning specified in Section 2(e) hereof.

"Event Termination Date" has the meaning specified in Section 2(e) hereof.

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

"Filing Deadline Date" has the meaning specified in Section 2(a) hereof.

"Holder" has the meaning specified in the second paragraph of this Agreement.

"Indenture" means the Indenture dated as of the date hereof between the Company and the Trustee, pursuant to which the Securities are being issued.

"Initial Purchasers" has the meaning specified in the first paragraph of this Agreement.

"Initial Shelf Registration Statement" has the meaning specified in Section 2(a) hereof.

"Issue Date" means June 20, 2001.

"Liquidated Damages Amount" has the meaning specified in Section 2(e) hereof.

"Material Event" has the meaning specified in Section 3(i) hereof.



"Notice and Questionnaire" means a written notice delivered to the Company containing substantially the information called for by the Selling Securityholder Notice and Questionnaire attached as Annex A to the Offering Memorandum of the Company issued June 14, 2001 relating to the Securities.

"Notice Holder" means, on any date, any Holder that has delivered a Notice and Questionnaire to the Company on or prior to such date.

"Principal Amount" means, with respect to the Securities, the principal amount due on the maturity date as shown on such Securities.

"Prospectus" means the prospectus included in any Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any amendment or prospectus supplement, including post-effective amendments, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such Prospectus.

"Purchase Agreement" has the meaning specified in the first paragraph of this Agreement.

"Record Holder" means, with respect to any Damages Payment Date relating to any Securities or Underlying Common Stock as to which any Liquidated Damages Amount has accrued, the registered holder of such Securities or Underlying Common Stock, as the case may be, 15 days prior to the next succeeding Damages Payment Date.

"Registrable Securities" means the Securities and the Underlying
Common Stock, until the Securities have been converted into or exchanged for the Underlying Common Stock, and, at all times subsequent to any such conversion or exchange, any Underlying Common Stock into or for which such Securities have been converted or exchanged, and any security issued with respect thereto upon any stock dividend, split or similar event until, in the case of any such security, the earliest of (i) its effective registration under the Securities Act and resale in accordance with the Registration Statement covering it, (ii) expiration of the holding period that would be applicable thereto under Rule 144(k) were it not held by an Affiliate of the Company or (iii) its sale to the public pursuant to Rule 144.

"Registration Expenses" has the meaning specified in Section 5 hereof.

"Registration Statement" means any registration statement of the
Company that covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such registration statement.

"Restricted Securities" has the meaning assigned to that term in Rule
144.

"Rule 144" means Rule 144 under the Securities Act, as such Rule may
be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.



"Rule 144A" means Rule 144A under the Securities Act, as such Rule may
be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

"SEC" means the U.S. Securities and Exchange Commission and any
successor agency.

"Securities" means the 4% Convertible Subordinated Notes due 2006 of
the Company to be purchased pursuant to the Purchase Agreement.

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

"Shelf Registration Statement" has the meaning specified in Section
2(a) hereof.

"Subsequent Shelf Registration Statement" has the meaning specified in
Section 2(b) hereof.

"TIA" means the Trust Indenture Act of 1939, as amended.

"Trustee" means American Stock Transfer & Trust Company (or any
successor entity), the Trustee under the Indenture.

"Underlying Common Stock" means the Common Stock into which the
Securities are convertible or issued upon any such conversion.

Section 2. Shelf Registration. (a) The Company shall prepare and file or cause to be prepared and filed with the SEC, as soon as practicable but in any event by the date (the "Filing Deadline Date") which is the later of (i) ninety (90) days after the Issue Date and (ii) October 1, 2001, a Registration Statement for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act (a "Shelf Registration Statement") registering the resale from time to time by Holders thereof of all of the Registrable Securities (the "Initial Shelf Registration Statement"). The Initial Shelf Registration Statement shall be on Form S-3 or another appropriate form permitting registration of such Registrable Securities for resale by such Holders in accordance with the methods of distribution elected by the Holders and set forth in the Initial Shelf Registration Statement. The Company shall use

its best efforts to cause the Initial Shelf Registration Statement to be declared effective under the Securities Act as promptly as is practicable but in any event by the date (the "Effectiveness Deadline Date") that is one hundred and fifty (150) days after the Issue Date, and to keep the Initial Shelf Registration Statement (or any Subsequent Shelf Registration Statement) continuously effective under the Securities Act until the expiration of the Effectiveness Period; provided, however, that no Holder shall be entitled to have the Registrable Securities held by it covered by such Shelf Registration Statement unless such Holder shall have provided a Notice and Questionnaire in accordance with Section 2(d) and is in compliance with Section 4. None of the Company's security holders (other than the Holders of Registrable Securities) shall have the right to include any of the Company's securities in the Shelf Registration Statement.

(b) If the Initial Shelf Registration Statement or any Subsequent Shelf Registration Statement ceases to be effective for any reason at any time during the Effectiveness



Period (other than because all Registrable Securities registered thereunder shall have been resold pursuant thereto or shall have otherwise ceased to be Registrable Securities), the Company shall use its best efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall within thirty (30) days of such cessation of effectiveness amend the Shelf Registration Statement in a manner reasonably expected to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional Shelf Registration Statement covering all of the securities that as of the date of such filing are Registrable Securities (a "Subsequent Shelf Registration Statement"). If a Subsequent Shelf Registration Statement is filed, the Company shall use its best efforts to cause the Subsequent Shelf Registration Statement to become effective as promptly as is practicable after such filing and to keep such Registration Statement (or subsequent Shelf Registration Statement) continuously effective until the end of the Effectiveness Period.

(c) The Company shall supplement and amend the Shelf Registration Statement if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement, if required by the Securities Act or, to the extent to which the Company does not reasonably object, as reasonably requested by the Initial Purchasers or by the Trustee on behalf of the registered Holders.

(d) Each Holder of Registrable Securities agrees that if such Holder wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(d) and Section 3(i). Each Holder of Registrable Securities wishing to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus agrees to deliver a Notice and Questionnaire to the Company at least three (3) Business Days prior to any intended distribution of Registrable Securities under the Shelf Registration Statement; provided that, Holders of Registrable Securities shall have at least twenty (20) Business Days from the date on which the Notice and Questionnaire is first mailed to such Holders to return a completed and signed Notice and Questionnaire to the Company. From and after the date the Initial Shelf Registration Statement is declared effective, the Company shall, as promptly as is practicable after the date a Notice and Questionnaire is delivered, and in any event within five (5) Business Days after such date, (i) if required by applicable law, file with the SEC a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling security holder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its best efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as is practicable, but in any event by the date (the "Amendment Effectiveness Deadline Date") that is thirty (30) days after the date such post-effective amendment is required by this clause to be filed; (ii) provide such Holder copies of any documents filed pursuant to Section 2(d)(i); and (iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(d)(i); provided, that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon



expiration of the Deferral Period in accordance with Section 3(i), provided, further, that if a Deferral Period is in effect on the Amendment Effectiveness Deadline Date, then the Amendment Effectiveness Deadline Date shall be extended by the number of days of such Deferral Period and the Company shall not incur obligations to pay any Liquidated Damages during such extension, provided,

further, that if under applicable law the Company has more than one option as to the type or manner of making any such filing, it will make the required filing or filings in the manner or of a type that is reasonably expected to result in the earliest availability of the Prospectus for effecting resales of Registrable Securities. Notwithstanding anything contained herein to the contrary, the Company shall be under no obligation to name any Holder that is not a Notice Holder as a selling security holder in any Registration Statement or related Prospectus; provided, however, that any Holder that becomes a Notice Holder pursuant to the provisions of Section 2(d) of this Agreement (whether or not such Holder was a Notice Holder at the time the Registration Statement was declared effective) shall be named as a selling security holder in the Registration Statement or related Prospectus in accordance with the requirements of this Section 2(d).

(e) The parties hereto agree that the Holders of Registrable Securities will suffer damages, and that it would not be feasible to ascertain the extent of such damages with precision, if (i) the Initial Shelf Registration Statement has not been filed on or prior to the Filing Deadline Date, (ii) the Initial Shelf Registration Statement has not been declared effective under the Securities Act on or prior to the Effectiveness Deadline Date, (iii) the Company has failed to perform its obligations set forth in Section 2(d) hereof within the time period required therein, (iv) the Registration Statement ceases to be effective or fails to be usable without being succeeded within five (5) Business Days by a post-effective amendment or report filed with the SEC pursuant to the Exchange Act that cures the failure of the Registration Statement to be effective or usable, (v) the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(i) hereof or (vi) the number of Deferral Periods in any period exceeds the number permitted in respect of such period pursuant to Section 3(i) (each of the events of a type described in any of the foregoing clauses (i) through (vi) are individually referred to herein as an "Event," and the day following the Filing Deadline Date in the case of clause (i), the day following the Effectiveness Deadline Date in the case of clause (ii), the date by which the Company is required to perform its obligations set forth in Section 2(d) in the case of clause (iii) (including the filing of any post-effective amendment prior to the Amendment Effectiveness Deadline Date), (iv) the date by which the Company is required to perform its obligations set forth in clause (iv) above, the date on which the aggregate duration of Deferral Periods in any period exceeds the number of days permitted by Section 3(i) hereof in the case of clause (v), and the date of the commencement of a Deferral Period that causes the limit on the number of Deferral Periods in any period under Section 3(i) hereof to be exceeded in the case of clause (vi), being referred to herein as an "Event Date"). Events shall be deemed to continue until the "Event Termination Date," which shall be the following dates with respect to the respective types of Events: the date the Initial Shelf Registration Statement is filed in the case of an Event of the type described in clause (i), the date the Initial Shelf Registration Statement is declared effective under the Securities Act in the case of an Event of the type described in clause (ii), the date the Company performs its obligations set forth in Section 2(d) in the case of an Event of the type described in clause (iii) (including, without limitation, the date the relevant post-effective amendment to the Shelf Registration Statement is declared effective under the Securities Act), the date the Company performs its obligations set forth in clause (iv)



above in the case of an Event of the type described in clause (iv) above, termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods in a period set forth in Section 3(i) to be exceeded in the case of the commencement of an Event of the type described in clause (v), and termination of the Deferral Period the commencement of which caused the number of Deferral Periods in a period permitted by Section 3(i) to be exceeded in the case of an Event of the type described in clause (vi).

Accordingly, commencing on (and including) any Event Date and ending on (but excluding) the next date on which there are no Events that have occurred and are continuing (a "Damages Accrual Period"), the Company agrees to pay, as liquidated damages and not as a penalty, an amount (the "Liquidated Damages Amount"), payable on the Damages Payment Dates to Record Holders of then outstanding Securities that are Registrable Securities and of then outstanding shares of Underlying Common Stock issued upon conversion of Securities that are Registrable Securities, as the case may be, accruing, for each portion of such Damages Accrual Period beginning on and including a Damages Payment Date (or, in respect of the first time that the Liquidation Damages Amount is to be paid to Holders on a Damages Payment Date as a result of the occurrence of any particular Event, from the Event Date) and ending on but excluding the first to occur of (A) the date of the end of the Damages Accrual Period or (B) the next Damages Payment Date, at a rate per annum equal to one-quarter of one percent (0.25%) for the first 90-day period from the Event Date, and thereafter at a rate per annum equal to one-half of one percent (0.5%) of the aggregate Principal Amount of such Securities or; in the case of Securities that have been converted into or exchanged for Underlying Common Stock, the aggregate Applicable Conversion Price of such shares of Underlying Common Stock, as the case may be, in each case determined as of the Business Day immediately preceding the next Damages Payment Date; provided, that in the case of a Damages

Accrual Period that is in effect solely as a result of an Event of the type described in clause (iii) of the immediately preceding paragraph, such Liquidated Damages Amount shall be paid only to the Holders that have delivered Notice and Questionnaires that caused the Company to incur the obligations set forth in Section 2(d) the non-performance of which is the basis of such Event; provided further, that any Liquidated Damages Amount accrued with respect to any Securities or portion thereof called for redemption on a redemption date or converted into Underlying Common Stock on a conversion date prior to the Damages Payment Date, shall, in any such event, be paid instead to the Holder who submitted such Securities or portion thereof for redemption or conversion on the applicable redemption date or conversion date, as the case may be, on such date (or promptly following the conversion date, in the case of conversion). Notwithstanding the foregoing, no Liquidated Damages Amounts shall accrue as to any Registrable Security from and after the earlier of (x) the date such security is no longer a Registrable Security and (y) expiration of the Effectiveness Period. The rate of accrual of the Liquidated Damages Amount with respect to any period shall not exceed the rate provided for in this paragraph notwithstanding the occurrence of multiple concurrent Events. Following the cure of all Events requiring the payment by the Company of Liquidated Damages Amounts to the Holders of Registrable Securities pursuant to this Section, the accrual of Liquidated Damages Amounts will cease (without in any way limiting the effect of any subsequent Event requiring the payment of Liquidated Damages Amount by the Company).

The Trustee shall be entitled, on behalf of Holders of Securities or Underlying Common Stock, to seek any available remedy for the enforcement of this Agreement, including for the payment of any Liquidated Damages Amount. Notwithstanding the foregoing, the parties



agree that the sole monetary damages payable for a violation of the terms of this Agreement with respect to which liquidated damages are expressly provided shall be such liquidated damages. Nothing shall preclude a Notice Holder or Holder of Registrable Securities from pursuing or obtaining specific performance or other equitable relief with respect to this Agreement.

All of the Company's obligations set forth in this Section 2(e) that are outstanding with respect to any Registrable Security at the time such security ceases to be a Registrable Security shall survive until such time as all such obligations with respect to such security have been satisfied in full (notwithstanding termination of this Agreement pursuant to Section 8(k)).

The parties hereto agree that the liquidated damages provided for in this Section 2(e) constitute a reasonable estimate of the damages that may be incurred by Holders of Registrable Securities by reason of the failure of the Shelf Registration Statement to be filed or declared effective or available for effecting resales of Registrable Securities in accordance with the provisions hereof.

Section 3. Registration Procedures. In connection with the registration obligations of the Company under Section 2 hereof, the Company shall:

(a) Before filing any Registration Statement or Prospectus or any amendments or supplements thereto with the SEC, furnish to the Initial Purchasers copies of all such documents proposed to be filed and use its best efforts to reflect in each such document when so filed with the SEC such comments as the Initial Purchasers reasonably shall propose within three (3) Business Days of the delivery of such copies to the Initial Purchasers.

(b) Prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement continuously effective for the applicable period specified in Section 2(a); cause the related Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act; and comply with the provisions of the Securities Act applicable to it with respect to the disposition of all securities covered by such Registration Statement during the Effectiveness Period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement as so amended or such Prospectus as so supplemented.

(c) As promptly as practicable give notice to the Notice Holders and the Initial Purchasers (i) when any Prospectus, Prospectus supplement, Registration Statement or post-effective amendment to a Registration Statement has been filed with the SEC and, with respect to a Registration Statement or any post-effective amendment, when the same has been declared effective, (ii) of any request, following the effectiveness of the Initial Shelf Registration Statement under the Securities Act, by the SEC or any other federal or state governmental authority for amendments or supplements to any Registration Statement or related Prospectus or for additional information, (iii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of any Registration Statement or the initiation or threatening

of any proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or



exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, (v) of the occurrence of (but not the nature of or details concerning) a Material Event (provided, however, that no notice by the Company shall be required pursuant to this clause (v) in the event that the Company either promptly files a Prospectus supplement to update the Prospectus or a Form 8-K or other appropriate Exchange Act report that is incorporated by reference into the Registration Statement, which, in either case, contains the requisite information with respect to such Material Event that results in such Registration Statement no longer containing any untrue statement of material fact or omitting to state a material fact necessary to make the statements contained therein not misleading) and (vi) of the determination by the Company that a post-effective amendment to a Registration Statement will be filed with the SEC, which notice may, at the discretion of the Company (or as required pursuant to Section 3(i)), state that it constitutes a Deferral Notice, in which event the provisions of Section 3(i) shall apply.

(d) Use its best efforts to prevent the issuance, and if issued to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction in which they have been qualified for sale, in either case at the earliest possible moment.

(e) If reasonably requested by the Initial Purchasers or any Notice Holder, promptly incorporate in a Prospectus supplement or post-effective amendment to a Registration Statement such information as the Initial Purchasers or such Notice Holder shall, on the basis of an opinion of nationally-recognized counsel experienced in such matters, determine to be required to be included therein by applicable law and make any required filings of such Prospectus supplement or such post-effective amendment; provided, that the Company shall not be required to take any actions under this Section 3(e) that are not, in the reasonable opinion of counsel for the Company, in compliance with applicable law.

(f) Furnish to each Notice Holder and the Initial Purchasers without charge, at least one (1) conformed copy of the Registration Statement and any amendment thereto, including financial statements but excluding schedules, all documents incorporated or deemed to be incorporated therein by reference and all exhibits (unless requested in writing to the Company by such Notice Holder or the Initial Purchasers, as the case may be).

(g) During the Effectiveness Period, deliver to each Notice Holder in connection with any sale of Registrable Securities pursuant to a Registration Statement, without charge, as many copies of the Prospectus or Prospectuses relating to such Registrable Securities (including each preliminary prospectus) and any amendment or supplement thereto as such Notice Holder may reasonably request; and the Company hereby consents (except during such periods that a Deferral Notice is outstanding and has not been revoked) to the use of such Prospectus or each amendment or supplement thereto by each Notice Holder in connection with any offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto in the manner set forth therein.

(h) Prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, register or qualify or cooperate with the Notice Holders in



connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Notice Holder reasonably requests in writing (which request may be included in the Notice and Questionnaire); prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its best efforts to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period in connection with such Notice Holder's offer and sale of Registrable Securities pursuant to such registration or qualification (or exemption therefrom) and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of such Registrable Securities in the manner set forth in the relevant Registration Statement and the related Prospectus; provided, that the Company will not be required to (i) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Agreement or (ii) take any action that would subject it to general service of process in suits or to taxation in any such jurisdiction where it is not then so subject.

(i) Upon (A) the issuance by the SEC of a stop order suspending the

effectiveness of the Shelf Registration Statement or the initiation of proceedings with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Securities Act, (B) the occurrence of any event or the existence of any fact (a "Material Event") as a result of which any Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (C) the occurrence or existence of any pending corporate development that, in the discretion of the Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the related Prospectus, (i) in the case of clause (B) above, subject to the next sentence, promptly prepare and file a post-effective amendment to such Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference or file any other required document that would be incorporated by reference into such Registration Statement and Prospectus so that such Registration Statement does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and such Prospectus does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, and, in the case of a post-effective amendment to a Registration Statement, subject to the next sentence, use its best efforts to cause it to be declared effective as promptly as is reasonably practicable, and (ii) give notice to the Notice Holders that the availability of the Shelf Registration Statement is suspended (a "Deferral Notice") and, upon receipt of any Deferral Notice, each Notice Holder agrees not to sell any Registrable Securities pursuant to the Registration Statement until such Notice Holder's receipt of copies of the supplemented or amended Prospectus provided for in clause (i) above, or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed (x) in the case of clause (A) above, as promptly as is practicable, (y) in the case



of clause (B) above, as soon as, in the sole judgment of the Company, public disclosure of such Material Event would not be prejudicial to or contrary to the interests of the Company or, if necessary to avoid unreasonable burden or expense, as soon as reasonably practicable thereafter and (z) in the case of clause (C) above, as soon as, in the discretion of the Company, such suspension is no longer appropriate. The period during which the availability of the Registration Statement and any Prospectus is suspended (the "Deferral Period"), without the Company incurring any obligation to pay liquidated damages pursuant to Section 2(e), shall not exceed forty-five (45) days in any three (3) month period and ninety (90) days in any twelve (12) month period.

(j) If requested, make available for inspection during normal business hours by a representative for the Notice Holders of such Registrable Securities and any broker-dealers, attorneys and accountants retained by such Notice Holders, all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, and cause the appropriate executive officers, directors and designated employees of the Company and its subsidiaries to make available for inspection during normal business hours all relevant information reasonably requested by such representative for the Notice Holders or any such broker-dealers, attorneys or accountants in connection with such disposition, in each case as is customary for similar "due diligence" examinations; provided, however, that such persons shall first agree in writing with the Company that any information that is reasonably and in good faith designated by the Company in writing as confidential at the time of delivery of such information shall be kept confidential by such persons and shall be used solely for the purposes of exercising rights under this Agreement, unless and to the extent that (i) disclosure of such information is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities, (ii) disclosure of such information is required by law (including any disclosure requirements pursuant to federal securities laws in connection with the filing of any Registration Statement or the use of any Prospectus referred to in this Agreement), (iii) such information becomes generally available to the public other than as a result of a disclosure or failure to safeguard by any such person or (iv) such information becomes available to any such person from a source other than the Company and such source is not bound by a confidentiality agreement; and provided further, that the foregoing inspection and information gathering shall, to the greatest extent possible, be coordinated on behalf of all the Notice Holders and the other parties entitled thereto by the counsel referred to in Section 5 and provided further, that the Company shall not be required to disclose any information subject to the attorney-client or attorney-work product privilege if and to the extent such disclosure would constitute a waiver of such privilege.

(k) Comply with all applicable rules and regulations of the SEC and make generally available to its securityholders earning statements (which need not be audited) satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) no later than 45 days after the end of any 12-month period (or 90 days after the end of any 12-month period if such period is a fiscal year) commencing on the first day of the first fiscal quarter of the Company commencing after the effective date of a Registration Statement, which statements shall cover said 12-month periods.

(l) Cooperate with each Notice Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities sold pursuant to a Registration



Statement, and cause such Registrable Securities to be in such denominations as are permitted by the Indenture and registered in such names as such Notice Holder may request in writing at least two Business Days prior to any sale of such Registrable Securities.

(m) Provide a CUSIP number for all Registrable Securities covered by each Registration Statement not later than the effective date of such Registration Statement and provide the Trustee for the Securities and the transfer agent for the with printed certificates for the Registrable Securities that are in a form eligible for deposit with The Depository Trust Company.

(n) Use its best efforts to provide such information as is required for any filings required to be made with the National Association of Securities Dealers, Inc.

(o) Upon (i) the filing of the Initial Shelf Registration Statement and (ii) the effectiveness of the Initial Shelf Registration Statement, announce the same, in each case by release to Reuters Economic Services and Bloomberg Business News.

(p) Enter into such customary agreements and take all such other necessary actions in connection therewith (including those reasonably requested by the holders of a majority of the Registrable Securities being sold) in order to expedite or facilitate disposition of such Registrable Securities.

(q) Cause the Indenture to be qualified under the TIA not later than the effective date of any Registration Statement; and in connection therewith, cooperate with the Trustee to effect such changes to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the TIA and execute, and use its best efforts to cause the Trustee to execute, all documents as may be required to effect such changes, and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner.

Section 4. Holder's Obligations. Each Holder agrees, by acquisition of the Registrable Securities, that no Holder of Registrable Securities shall be entitled to sell any of such Registrable Securities pursuant to a Registration Statement or to receive a Prospectus relating thereto, unless such Holder has furnished the Company with a Notice and Questionnaire as required pursuant to Section 2(d) hereof (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. Each Notice Holder agrees promptly to furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such Notice Holder not misleading and any other information regarding such Notice Holder and the distribution of such Registrable Securities as may be required to be disclosed in the Registration Statement under applicable law. Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder provided by such Holder in the Notice and Questionnaire does not as of the date of such Notice and Questionnaire contain any untrue statement of a material fact relating to such Holder or its plan of distribution.



Section 5. Registration Expenses. The Company shall bear all fees and expenses incurred in connection with the performance by the Company of its obligations under Sections 2 and 3 of this Agreement whether or not any of the Registration Statements are declared effective. Such fees and expenses shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (x) with respect to filings required to be made with the National Association of Securities Dealers, Inc. and (y) of compliance with federal and state securities or Blue Sky laws (including, without limitation, fees and disbursements of the counsel specified in the next sentence in connection with Blue Sky qualifications of the Registrable Securities under the laws of such jurisdictions as the Notice Holders of a majority of the Registrable Securities being sold pursuant to a Registration

Statement may designate), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities in a form eligible for deposit with The Depository Trust Company), (iii) duplication expenses relating to copies of any Registration Statement or Prospectus delivered to any Holders hereunder, (iv) fees and disbursements of counsel for the Company in connection with the Shelf Registration Statement, and (v) fees and disbursements of the Trustee and its counsel and of the registrar and transfer agent for the Common Stock. In addition, the Company shall bear or reimburse the Notice Holders for the fees and disbursements of one firm of legal counsel for the Holders, which shall initially be Shearman & Sterling, but which may, upon the written consent of the Initial Purchasers (which shall not be unreasonably withheld), be another nationally recognized law firm experienced in securities law matters designated by the Company. In addition, the Company shall pay the internal expenses of the Company (including, without limitation, all salaries and expenses of officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange on which similar securities of the Company are then listed and the fees and expenses of any person, including special experts, retained by the Company.

Section 6. Indemnification; Contribution. (a) The Company agrees
to indemnify and hold harmless the Initial Purchasers and each holder of Registrable Securities and each person, if any, who controls the Initial Purchasers or any holder of Registrable Securities within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

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



threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, provided that (subject to Section 6(d) below) any such settlement is effected with the prior written consent of the Company; and

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

provided, however, that this indemnity shall not apply to any loss, liability,
claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by the Initial Purchasers or such holder of Registrable Securities (which also acknowledges the indemnity provisions herein) and each person, if any, who controls the Initial Purchasers or any such holder of Registrable Securities expressly for use in the Registration Statement (or any amendment thereto), or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto); provided further, that this indemnity shall not apply to any loss, liability, claim, damage or expense if the Holder fails to deliver at or prior to the written confirmation of sale, the most recent Prospectus, as amended or supplemented, and such Prospectus, as amended or supplemented, having been previously furnished by on or behalf of the Company to such Holder corrected such untrue statement or omission or alleged untrue statement or omission of a material fact and the delivery thereof by such Holder was required by law or any rule or regulation of any applicable stock exchange.

(b) In connection with any Shelf Registration in which a holder, including, without limitation, the Initial Purchasers, of Registrable Securities is participating, in furnishing information relating to such holder of Registrable Securities to the Company in writing expressly for use in such Registration Statement, any preliminary prospectus, the Prospectus or any amendments or supplements thereto, the holders of such Registrable Securities

agree, severally and not jointly, to indemnify and hold harmless the Initial Purchasers and each person, if any, who controls the Initial Purchasers within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act and the Company, and each person, if any, who controls the Company within the meaning of either such Section, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by such holder of Registrable Securities (which also acknowledges the indemnity provisions herein) and each person, if any, who controls any such holder of Registrable Securities expressly for use in the Registration Statement (or any amendment thereto) or such preliminary prospectus or the Prospectus (or any amendment or supplement thereto).



Each of the Initial Purchasers agrees to indemnify and hold harmless the Company, the holders of Registrable Securities, and each person, if any, who controls the Company or any holder of Registrable Securities within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by the Initial Purchasers expressly for use in the Registration Statement (or any amendment thereto) or such preliminary prospectus or the Prospectus (or any amendment or supplement thereto).

(c) Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. An indemnifying party may participate at its own expense in the defense of any such action; provided, --------
however, that counsel to the indemnifying party shall not (except with the -------
consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(e) If the indemnification provided for in this Section 6 is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses



incurred by such indemnified party, as incurred, in such proportion as is appropriate to reflect the relative fault of the indemnifying party or parties on the one hand and of the indemnified party on the other hand in connection with the statements or omissions which resulted in such losses, liabilities,

claims, damages or expenses, as well as any other relevant equitable considerations.

The relative fault of the Company on the one hand and the holders of the Registrable Securities or the Initial Purchasers on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the holder of the Registrable Securities or the Initial Purchasers and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6(e) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 6(e). The aggregate amount of losses, liabilities, claims, damages, and expenses incurred by an indemnified party and referred to above in this Section 6(e) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 6, neither the holder of any Registrable Securities nor the Initial Purchasers, shall be required to indemnify or contribute any amount in excess of the amount by which the total price at which the Registrable Securities sold by such holder of Registrable Securities or underwritten by the Initial Purchasers, as the case may be, and distributed to the public were offered to the public exceeds the amount of any damages that such holder of Registrable Securities or the Initial Purchasers has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 6(e), each person, if any, who controls the Initial Purchasers or any holder of Registrable Securities within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Initial Purchasers or such holder, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Company.

Section 7. Information Requirements. (a) The Company covenants that, if at any time before the end of the Effectiveness Period the Company is not subject to the reporting requirements of the Exchange Act, it will cooperate with any Holder of Registrable Securities and take such further reasonable action as any Holder of Registrable Securities may reasonably



request in writing (including, without limitation, making such reasonable representations as any such Holder may reasonably request), all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 and Rule 144A under the Securities Act and customarily taken in connection with sales pursuant to such exemptions. Upon the written request of any Holder of Registrable Securities, the Company shall deliver to such Holder a written statement as to whether it has complied with such filing requirements, unless such a statement has been included in the Company's most recent report required to be filed and filed pursuant to Section 13 or Section 15(d) of Exchange Act. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Company to register any of its securities (other than the Common Stock) under any section of the Exchange Act.

Section 8. Miscellaneous.

(a) No Conflicting Agreements. The Company is not, as of the date hereof, a party to, nor shall it, on or after the date of this Agreement, enter into, any agreement with respect to its securities that conflicts with the rights granted to the Holders of Registrable Securities in this Agreement. The Company represents and warrants that the rights granted to the Holders of Registrable Securities hereunder do not in any way conflict with the rights granted to the holders of the Company's securities under any other agreements.

(b) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof

may not be given, unless the Company has obtained the written consent of Holders of a majority of the then outstanding Underlying Common Stock constituting Registrable Securities (with Holders of Securities deemed to be the Holders, for purposes of this Section, of the number of outstanding shares of Underlying Common Stock into which such Securities are or would be convertible or exchangeable as of the date on which such consent is requested). Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders of Registrable Securities whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect the rights of other Holders of Registrable Securities may be given by Holders of at least a majority of the Registrable Securities being sold by such Holders pursuant to such Registration Statement; provided, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the immediately preceding sentence. Each Holder of Registrable Securities outstanding at the time of any such amendment, modification, supplement, waiver or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver or consent effected pursuant to this Section 8(b), whether or not any notice, writing or marking indicating such amendment, modification, supplement, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

(c) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, by telecopier, by courier guaranteeing overnight delivery or by first-class mail, return receipt requested, and shall be deemed given (i) when made, if made by hand delivery, (ii) upon confirmation, if made by telecopier, (iii) one (1)



Business Day after being deposited with such courier, if made by overnight courier or (iv) on the date indicated on the notice of receipt, if made by first-class mail, to the parties as follows:

(w) if to a Holder of Registrable Securities, at the most current address given by such Holder to the Company in a Notice and Questionnaire or any amendment thereto;

(x) if to the Company, to:

14040 Danielson Street
Poway, California 92064
Attention: General Counsel

and

Latham & Watkins
650 Town Center Drive, 20/th/ Floor
Costa Mesa, CA 92626-1925
Attention: Patrick T. Seaver
Telecopy No.: (714) 755-8290

(y) if to the Initial Purchasers, to:

101 California Street
Suite 1420
San Francisco, California 94111
Attention:

and

10900 Wilshire Boulevard
Suite 900
Los Angeles, California 90024
Attention:

or to such other address as such person may have furnished to the other persons identified in this Section 8(c) in writing in accordance herewith.

(d) Approval of Holders. Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, the Registrable Securities held by the Company or its Affiliates (other than the Initial Purchasers or subsequent Holders of Registrable Securities if such subsequent Holders are deemed to be such affiliates solely by reason of their holdings of such Registrable Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(e) Successors and Assigns. Any person who purchases any Registrable Securities from the Initial Purchasers shall be deemed, for purposes of this Agreement, to be an assignee of the Initial Purchasers. This Agreement shall inure to the benefit of and be binding

upon the successors and assigns of each of the parties and shall inure to the benefit of and be binding upon each Holder of any Registrable Securities.

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

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

(h) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

(i) Severability. If any term, provision, covenant or restriction of this Agreement is held to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, and the parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

(j) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and the registration rights granted by the Company with respect to the Registrable Securities. Except as provided in the Purchase Agreement, there are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted by the Company with respect to the Registrable Securities. This Agreement supersedes all prior agreements and undertakings among the parties with respect to such registration rights.

(k) Termination. This Agreement and the obligations of the parties hereunder shall terminate upon the expiration of the Effectiveness Period, except for any liabilities or obligations under Sections 4, 5 or 6 hereof and the obligations to make payments of and provide for liquidated damages under Section 2(e) hereof to the extent such damages accrue prior to the end of the Effectiveness Period, each of which shall remain in effect in accordance with its terms.

[Remainder of this page intentionally left blank]



IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

RESMED INC.

By: /s/ Peter C. Farrell
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Name: Peter C. Farrell
Title: Chairman of the Board, President and
Chief Executive Officer

Confirmed and accepted as of the date
first above written:

MERRILL LYNCH & CO.
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED
DEUTSCHE BANC ALEX. BROWN INC.
WILLIAM BLAIR & COMPANY, L.L.C.
MACQUARIE BANK LIMITED
UBS WARBURG LLC

By: MERRILL LYNCH & CO.
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: /s/ Merrill Lynch & Co.
---

Name: Brad W. Coburn
Title: Vice President

Exhibit 11.1

ResMed Inc and Subsidiaries
Computation of Earnings Per Common Share
(in thousands, except per share amounts)

| | Year Ended June 30, | | |
|---|---|---|---|
| | 2001 | 2000 | 1999 |
| Basic Earnings | | | |
| Net income | $11,630 | $22,226 | 16,102 |
| Shares | | | |
| Weighted average number of common shares outstanding | 31,129 | 30,153 | 29,416 |
| Basic earnings per share | $ 0.37 | $ 0.74 | $ 0.55 |
| Diluted Earnings | | | |
| Net income | $11,630 | $22,226 | 16,102 |
| Shares | | | |
| Weighted average number of common shares outstanding | 31,129 | 30,153 | 29,416 |
| Additional shares assuming conversion of stock options under treasury stock method | 2,355 | 2,150 | 1,652 |
| Weighted average number of common and Common equivalent shares outstanding as adjusted | 33,484 | 32,303 | 31,068 |
| Diluted earnings per share | $ 0.35 | $ 0.69 | $ 0.52 |

See accompanying independent auditor's report.

Exhibit 21.1

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ResMed Inc
Subsidiaries of the Registrant

ResMed Holdings Limited (incorporated under the laws of New South Wales, Australia)

ResMed Limited (incorporated under the laws of New South Wales, Australia)*

ResMed Asia Pacific Limited (incorporated under the laws of New South Wales, Australia)*

ResMed Corporation (a Minnesota corporation)

ResMed (UK) Limited (a United Kingdom corporation)*

ResMed International Inc (a Delaware corporation)

ResMed Priess GmbH and Co Kg (a German corporation)**

ResMed SA (a French corporation)**

ResMed Priess GmbH (a German corporation)

ResMed Singapore Pte Ltd (a Singaporean corporation)**

ResMed (Malaysia) Sdn Bhd (a Malaysian Corporation)**

ResMed New Zealand Limited (a New Zealand Corporation)**

ResMed R&D Limited (incorporated under the laws of New South Wales, Australia)*

ResMed Sweden AB (a Swedish corporation)**

ResMed KK (a Japanese corporation)**

ResMed Beteiligungs GmbH (a German corporation)

MAP Medizin-Technologie GmbH (a German corporation)***

MAP Medizintechnik fur Arzt und Patient GmbH & Co Kg (a German corporation)****

MAP Medizintechnik fur Arzt und Patient GmbH (a Swiss corporation)****

MAP Hirsch Medizintechnik fur Arzt und Patient GmbH (an Austrian corporation)****

MAP Techniques Avancees pour Medecins et Patients SA (a French corporation)****

Blue Medic SA (a French corporation)****

MAP Medische Techniek voor Arts en Patient BV (a Dutch corporation)****

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*A subsidiary of ResMed Holdings Limited
** A subsidiary of ResMed International Inc
*** A subsidiary of ResMed Beteiligungs GmbH
**** A subsidiary of MAP Medizin-Technologie GmbH

Exhibit 23.1

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Independent Auditors' Consent and Report on Schedule

The Board of Directors and Stockholders
ResMed Inc:

The audits referred to in our report dated August 3, 2001, included the related financial statement schedule as of June 30, 2001 and for each of the years in the three-year period ended June 30, 2001. This financial statement schedule is the responsibility of the Company's management. Our responsibility is to express an opinion on this financial statement schedule based on our audits. In our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We consent to incorporation by reference in the registration statements (Nos. 333-08013 and 333-83231) on Form S-8 of ResMed Inc of our reports included herein.

/s/ KPMG LLP
KPMG LLP
San Diego, California
September 14, 2001