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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-K**

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

For the fiscal year ended September 30, 2004

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission File No. 1-6620

**GRIFFON CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**100 Jericho Quadrangle, Jericho, New York**

(Address of Principal Executive Offices)

Registrant's telephone number, including area code:

**11-1893410**

(I.R.S. Employer  
Identification No.)

**11753**

(Zip Code)

**(516) 938-5544**

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

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$.25 par value	New York Stock Exchange
Preferred Share Purchase Rights	New York Stock Exchange

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 such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K 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 this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes  No

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked prices of common equity, as of the last business day of the registrant's most recently completed second fiscal quarter. As of March 31, 2004 approximately \$600,000,000.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date. As of December 1, 2004—28,952,952.

**DOCUMENTS INCORPORATED BY REFERENCE:**

Part III—(Items 10, 11, 12, 13 and 14). Registrant's definitive proxy statement to be filed pursuant to Regulation 14A of the Securities Exchange Act of 1934.

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## PART I

### Item 1. Business

#### The Company

Griffon is a diversified manufacturing company with operations in four business segments: Garage Doors; Installation Services; Specialty Plastic Films; and Electronic Information and Communication Systems. The company's Garage Doors segment designs, manufactures and sells garage doors for use in the residential housing and commercial building markets. The Installation Services segment sells, installs and services garage doors, garage door openers, manufactured fireplaces, floor coverings, cabinetry and a range of related building products primarily for the new residential housing market. The company's Specialty Plastic Films segment develops, produces and sells plastic films and film laminates for use in infant diapers, adult incontinence products, feminine hygiene products and disposable surgical and patient care products. The company's Electronic Information and Communication Systems segment designs, manufactures, sells and provides logistical support for communications, radar, information, command and control systems and large-scale integrated circuits for defense and commercial markets.

The company relies upon both internal growth and strategic investments to develop its business. Over the past five years, the company has invested significant amounts to support growth. Equipment and plant expenditures in fiscal 2004 aggregated \$56 million, the major portion of which were for Specialty Plastic Films' ongoing capital expansion programs to increase its capacity to produce printed multi-color films and laminates for its baby diaper products in North America and Europe and to otherwise increase capacity throughout its operations. In fiscal 2004, the company purchased land near Sao Paulo, Brazil to build a manufacturing facility to expand its South American specialty plastic film operations. The company has also made strategic investments in each of its business segments to enhance its market position and expand into new markets, including:

- In 2000, the Electronic Information and Communication Systems segment acquired a search and weather radar product line.
- In 2002, Specialty Plastic Films acquired 60% ownership, which ownership was increased to 90% in October 2004, of a manufacturer of plastic hygienic and specialty films in Brazil, further expanding its markets and global supply capabilities.
- In fiscal 2004, Specialty Plastic Films continued a significant capital expansion program commenced in fiscal 2003 which is designed to increase its overall production capacity and support anticipated growth opportunities with its major customers.
- In 1999 and 2000, Installation Services acquired a number of installation operations.

The company was incorporated on May 18, 1959 under the laws of the State of New York. It was reincorporated in Delaware in 1970 and its name was changed to Griffon Corporation in 1995. The company makes available, free of charge through its website at [www.griffoncorp.com](http://www.griffoncorp.com), its annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934 as soon as reasonably practicable after such material is filed with or furnished to the Securities and Exchange Commission.

#### Garage Doors

The company believes that its wholly-owned subsidiary, Clopay, is the largest manufacturer and marketer of residential garage doors and among the largest manufacturers of commercial sectional doors in the United States. The company's building products are sold under Clopay<sup>®</sup>, Ideal Door<sup>®</sup> and Holmes<sup>®</sup> brand names through an extensive distribution network throughout the United States. The company

estimates that the majority of Garage Doors' net sales are from sales of garage doors to the home remodeling segment of the residential housing market, with the balance from the new residential housing and commercial building markets. The segment employs approximately 1,800 employees. Sales into the home remodeling market are being driven by the continued aging of the housing stock and the trend of improving home appearance.

According to industry sources, the residential and commercial sectional garage door market for 2004 was estimated to be \$1.85 billion. Over the past decade there have been several key trends driving the garage door industry, including the shift from wood to steel doors and the growth of the home center channel of distribution. The company estimates that over 90% of the total garage door market today is steel doors. Superior strength, reduced weight and low maintenance have favored the steel door. Other product innovations during this period include insulated double-sided steel doors, new springing systems and residential garage doors with improved safety features.

#### *Products and Services*

The company manufactures a broad line of residential and commercial sectional garage doors with a variety of options at varying prices. The company offers garage doors made from several materials, including steel and wood. The company also sells related products such as garage door openers manufactured by third parties.

The company also markets commercial sectional doors. Commercial sectional doors are similar to residential garage doors, but are designed to meet more demanding performance specifications.

Sales by Garage Doors have provided approximately 33% of the company's consolidated revenue in 2004, 32% in 2003 and 35% in 2002.

#### *Sales and Marketing*

The company distributes its building products through a wide range of distribution channels including installing dealers, retailers and wholesalers. The company owns and operates a national network of 47 distribution centers. The company's building products are sold to approximately 2,000 independent professional installing dealers and to major home center retail chains, including The Home Depot, Inc., Menards, Inc. and Lowe's Companies, Inc. The company maintains strong relationships with its installing dealers and believes it is the largest supplier of residential garage doors to the retail and professional installing channels.

Over the past decade, an increasing number of garage doors have been sold through home center retail chains such as The Home Depot, Inc. The company estimates that approximately 35% of its garage doors are sold through the home center channel of distribution. These home centers sell garage doors to the do-it-yourself consumer, the small residential and commercial contractor, as well as installed residential doors and operators for the rapidly growing do-it-for-me consumer segment. Distribution through the retail channel requires different capabilities and skills than those traditionally utilized by garage door manufacturers. Factors such as immediately available inventory, national distribution, national installation services, point-of-sale merchandising and special packaging are all important to the retailer.

The company is the principal supplier of residential garage doors throughout the United States and Canada to The Home Depot, Inc., with Clopay® brand doors being sold exclusively to this customer in the retail channel of distribution. Sales of the Clopay® brand outside the retail channel of distribution are not restricted. The segment's largest customers are The Home Depot, Inc. and Menards, Inc. The loss of either of these customers would have a material adverse effect on the company's business. The company distributes its garage doors directly to customers from its manufacturing facilities and through its network of 47 company-owned distribution centers located throughout the United States and in Canada. These

distribution centers allow the company to maintain an inventory of garage doors near installing dealers and provide quick-ship service to retail and professional dealer customers.

#### *Manufacturing and Raw Materials*

The company currently operates four garage door manufacturing facilities. A key aspect of Garage Doors' research and development efforts has been the ability to continually improve and streamline its manufacturing process. The company's engineering and technological expertise, combined with its capital investment in equipment, generally has enabled the company to efficiently manufacture products in large volume and meet changing customer needs. The company's facilities use proprietary manufacturing processes to produce the majority of its products. Certain of the company's equipment and machinery are internally modified to achieve its manufacturing objectives. These manufacturing facilities produce a broad line of high quality garage doors for distribution to professional installer, retail and wholesale channels.

The principal raw material used in the company's manufacturing operations is galvanized steel, the price of which recently has significantly increased. The company also utilizes certain hardware components as well as wood and insulated foam. All of these raw materials are generally available from a number of sources.

#### *Research and Development*

The company operates a technical development center where its research engineers work to design, develop and implement new products and technologies and perform durability and performance testing of new and existing products, materials and finishes. Also at this facility, the company's process engineering team works to develop new manufacturing processes and production techniques aimed at improving manufacturing efficiencies.

#### *Competition*

The garage door industry is characterized by several large national manufacturers and many smaller regional and local manufacturers. The company competes on the basis of service, quality, price, brand awareness and product design.

The company's brand names are widely recognized in the building products industry. The company believes that it has earned a reputation among installing dealers, retailers and wholesalers for producing a broad range of high-quality doors. The company's market position and brand recognition are key marketing tools for expanding its customer base, leveraging its distribution network and increasing its market share.

#### **Installation Services**

The company has developed a substantial network of specialty building products installation and service operations. Its network of locations cover many of the key new single family home markets in the United States and offer a variety of building products and services to the residential construction and remodeling industries. The segment employs approximately 1,600 employees.

The company provides installed specialty building products primarily to residential builders. Builders are increasingly acting as developers and marketers, sub-contracting a substantial portion of the actual construction of a home. Traditionally, the market for installation services has been very fragmented, characterized by small operations offering a single type of building product in a single market. In what has historically been an undercapitalized, fragmented industry, the company has sufficient capital and the scale to attract professional management, achieve operating economies, and serve the needs of even the largest national builders.

Installation Services has targeted geographic markets that have a sizeable population or significant growth demographics. The markets served account for approximately 18% of all new residential housing permits in the United States. Installation Services' multiple product offering is primarily targeted at new construction, wherein products are generally consumed at approximately the same time in the construction process. Products offered can be selected and upgraded by the end-customer in the company's design centers. The company believes that its multi-product offering provides strategic marketing advantages over traditional, single product competitors, and provides the company with operational efficiencies. The company seeks to increase the cross-selling of its multiple products to its existing customers. Additionally, the company plans further growth through the introduction of additional installed building products. The replacement and remodeling markets are additional markets for the company's products and professional installation services.

#### *Products and Services*

Installation Services sells and installs a variety of building products:

*Garage Doors and Openers*—garage doors are distributed, professionally installed and serviced in the new construction and replacement markets. Installation Services sources most of its garage doors from Garage Doors.

*Fireplaces*—manufactured wood and gas fireplaces and related products such as stone or marble surrounds, wood mantels and gas logs are distributed, professionally installed and serviced, primarily to the new construction market.

*Flooring*—flooring products distributed and installed to the new construction market include carpeting, tile and stone, wood and vinyl.

*Appliances*—appliances distributed to the new construction market include refrigerators, stoves, cooktops, ovens and dishwashers.

*Kitchen and Bath Cabinets*—cabinetry, with options in wood varieties and door styles, are offered for distribution and installation to the new construction market.

*Other*—other products include seamless gutters, closet systems, window coverings and bath enclosures. Tile and stone applications for shower and bath walls, counter tops and fireplace surrounds are also offered.

The company is able to leverage the offering of these products over a common customer base, providing efficiencies and convenience to the customer. The company operates well-appointed product design centers that facilitate selection of products by the consumer, enhancing customer service and providing an environment conducive to up-selling into higher margin products.

Sales by Installation Services have provided approximately 22% of the company's consolidated revenue in 2004 and 23% in 2003 and 2002.

#### *Competition*

The installation services industry is fragmented, consisting primarily of smaller, single-market companies which have less financial resources than the company. The company competes on the basis of service, price and product line diversity.

#### **Specialty Plastic Films**

The company, through its wholly-owned subsidiary Clopay Plastics Products Company, develops and produces specialty plastic films and laminates for a variety of hygienic, health care and industrial uses in

domestic and certain international markets. Specialty Plastic Films' products include thin gauge embossed and printed films, elastomeric films and laminates of film and non-woven fabrics. These products are used primarily as moisture barriers in disposable infant diapers, adult incontinence products and feminine hygiene products, as protective barriers in single-use surgical and industrial gowns, drapes and equipment covers, and as packaging for hygienic products. Specialty Plastic Films' products are sold through the company's direct sales force primarily to multinational consumer and medical products companies. The segment employs approximately 1,100 employees worldwide.

The segment's major customer is Procter & Gamble, with whom the company enjoys a long and growing relationship. Specialty Plastic Films supplies Procter & Gamble with a variety of products used primarily for its infant diapers, both domestically and internationally, and expects to continue to expand the relationship in the future.

The segment of the specialty plastic films industry in which Clopay participates has been affected by several key trends over the past five years. These trends include the increased use of disposable products in developing countries and favorable demographics, including increasing immigration, in the major global economies. Other trends representing significant opportunities for manufacturers include the continued demand for new advanced products such as cloth-like, breathable, laminated, and printed products and the need of major customers for global supply partners. Notwithstanding the positive trends affecting the industry, design changes by Procter & Gamble for its infant diaper products have resulted in a change in products produced by the Company from laminates to a narrower printed film. As a result, the volume of film products sold by the segment for this market is expected to decline. The company believes that investments in its technology development capability and capacity increases will lead to sales of new and related products, minimizing the impact of this reduction.

#### *Products*

Specialty Plastic Films manufactures a wide variety of embossed and printed specialty films and laminates for the hygienic, healthcare and other markets. Specialty Plastic Films' products are used as moisture barriers for disposable infant diapers, adult incontinence and feminine hygiene products and as protective barriers in surgical and industrial gowns and drapes, equipment covers, flexible packaging, house wrap and other products. A specialty plastic film is a thin-gauge film (typically 0.0005" to 0.003") that is manufactured from polyolefin resins and engineered to provide certain performance characteristics. A laminate is the combination of a plastic film and a non-woven fabric. These products are produced using both cast and blown extrusion and laminating processes. High speed, multi-color custom printing of films and customized embossing patterns further differentiate the products. The company's specialty plastic film products typically provide a unique combination of performance characteristics that meet specific, proprietary customer needs. Examples of such characteristics include strength, breathability, barrier properties, processibility and aesthetic appeal.

Sales by Specialty Plastic Films have provided approximately 30% of the company's consolidated revenue in 2004, 30% in 2003 and 25% in 2002.

#### *Sales and Marketing*

The segment sells its products primarily in the United States and Europe with sales also in Canada, Central and South America and Asia Pacific. The segment utilizes an internal direct sales force, organized by customer accounts. Senior management actively participates by developing and maintaining close contacts with customers.

The segment's largest customer is Procter & Gamble, which has accounted for a substantial portion of Specialty Plastic Films' sales over the last five years. The loss of this customer would have a material

adverse effect on the company's business. Specialty plastic films also are sold to a diverse group of other leading consumer, health care and industrial companies.

The company seeks to expand its market presence for Specialty Plastic Films by capitalizing on its technological and manufacturing expertise and on its relationships with major international consumer products companies. Specifically, the company believes that it can continue to increase its North American sales and expand internationally through ongoing product development and enhancement and by marketing its technologically advanced breathable films and laminates and printed film for use in all of its markets. The company believes that its operations in Germany and Brazil provide a strong platform for additional sales growth in certain international markets.

#### *Research and Development*

The company believes it is an industry leader in the research, design and development of specialty plastic films and laminate products. The company operates a technical center where approximately 50 chemists, scientists and engineers work independently and in strategic partnerships with the company's customers to develop new technologies, products, processes and product applications. Currently, the company is engaged in several joint efforts with the research and development departments of its customers.

The company's research and development efforts have resulted in many inventions covering embossing patterns, improved processing methods, product formulations, product applications and other proprietary technology. Products developed by the company include microporous breathable films and cost-effective cloth-like films and laminates. Microporous breathability provides for moisture vapor transmission and airflow while maintaining barrier properties resulting in improved comfort and skin care. Cloth-like films and laminates provide consumers preferred aesthetics such as softness and visual appeal. The company recently began multi-color printing of films and laminates for its baby diaper products. The company holds a number of patents for its current specialty film and laminate products and related manufacturing processes. The company believes its patents are a less significant factor in its success than its proprietary know-how and the knowledge, ability and experience of its employees.

#### *International Operations*

The segment has two operations in Germany from which it sells plastic films throughout Europe. One of its German operations, Finotech, is structured as a joint venture with Corovin GmbH, a manufacturer of non-woven fabrics headquartered in Germany that is a subsidiary of BBA Group PLC, a publicly owned diversified U.K. manufacturer. Finotech is 60% owned by the company.

In June 2002, the company acquired 60% ownership in Isofilme Ltd., a manufacturer of plastic hygienic and specialty films located in Sao Paulo, Brazil which operates under the name Clopay do Brasil. In October 2004, the company acquired an additional 30% of Isofilme. The acquisition provides a platform to broaden participation in South American markets and strengthen the company's position as a global supplier.

#### *Manufacturing and Raw Materials*

The company manufactures its specialty plastic film and laminate products on high-speed equipment designed to meet stringent tolerances. The manufacturing process consists of melting a mixture of polyolefin resins (primarily polyethylene) and additives, and forcing this mixture through a computer controlled die and rollers to produce embossed films. In addition, the lamination process involves extruding the melted plastic films directly onto a non-woven fabric and bonding these materials to form a laminate. The company also manufactures multi-color printed films and laminates. Through statistical process control methods, company personnel monitor and control the entire production process.

This segment continued a significant capital expansion program begun in fiscal 2003 to support new opportunities with its major customers and to increase capacity throughout its operations. The product initiative involving the production of high-quality, multi-color printing of films and laminates for the baby diaper market in North America and Europe is nearing completion. Capital spending for Specialty Plastic Films was approximately \$30 million in fiscal 2003 and \$40 million in fiscal 2004. It is anticipated that spending in fiscal 2005 will approach 2004 levels, including the printing program and capacity additions for its operations in Europe and Brazil.

Plastic resins, such as polyethylene and polypropylene, and non-woven fabrics are the basic raw materials used in the manufacture of substantially all of Specialty Plastic Films' products, the price of which has increased since early 2002. The near-term outlook is for further increases in resin prices. The company currently purchases its plastic resins in pellet form from several suppliers. The purchases are made under supply agreements that do not specify fixed pricing terms. The company's sources for raw materials are believed to be adequate for its current and anticipated needs.

#### *Competition*

The market for the company's specialty plastic film and laminate products is highly competitive. The company has a number of competitors in the specialty plastic films and laminates market, some of which are larger and have greater resources than the company. The company believes that its technical expertise and product development capabilities enhance its market position and customer relationships. The company competes primarily on the basis of technical expertise, quality, service and price.

The company has developed strong, long-term relationships with leading consumer and health care products companies. The company believes that these relationships, combined with its technological expertise, product development and production capabilities, including global operations, have positioned it to meet changing customer needs, which the company expects will drive growth. In addition, the company believes its strong, long-term relationships provide it with increasing opportunities to expand and enter new international markets.

#### **electronic Information and Communication Systems**

The company, through its wholly-owned subsidiary, Telephonics Corporation, specializes in advanced electronic information and communication systems for defense, aerospace, civil, industrial, and commercial applications domestically and in certain international markets. The company designs, manufactures, sells, and provides logistical support for aircraft communication systems, radar, air traffic management, information and command and control systems, identification friend or foe ("IFF") equipment, transportation communication systems and custom, mixed-signal, application specific integrated circuits. The company is a leading supplier of airborne maritime surveillance radar and aircraft intercommunication management systems, the segment's two largest product lines. In addition to its traditional defense products used predominantly by the United States Government, in recent years the company has adapted its core technologies to products used in international markets and has expanded its presence in both non-defense government and commercial markets. In fiscal 2004, approximately 60% of the segment's sales were to the United States defense industry, 30% to international customers and 10% to commercial customers. The segment employs approximately 1,100 employees.

The United States defense electronics procurement budget is expected to grow faster than the overall defense budget. Growth in this budget area reflects the trend in recent years for the United States' Department of Defense to opt for the installation of new electronic systems and equipment in existing aircraft rather than develop new weapons systems. Conflicts involving the country's military have also tended in recent years to require deployment and significant coordination between air, sea and ground forces, often in distant parts of the world, underscoring the evolution and growing importance of electronic

systems that provide surveillance, tracking, communication and command and control. The company believes that Telephonics' advanced systems and sub-systems are well positioned to address the needs of an electronic battlefield with emphasis on the generation and dissemination of timely data for use by highly mobile ground, air and naval forces. The company anticipates that the need for such systems will also increase in connection with the increasingly active role that the military is playing in the war on terrorism, both at home and abroad.

*Programs and Products*

The table below lists some of the major programs the company currently participates in:

<b>Customer</b>	<b>Program</b>	<b>Product</b>
The Boeing Company	U.S. Air Force C-17A Cargo Transport	Intercommunications Management Systems
	U.S. Air Force C-130 Hercules Air Transport	
BAE Systems	Airborne Warning and Control System (AWACS)	Identification Friend or Foe System
	U.S. Navy F/A-18/E/F Fighter/Attack Aircraft	
	AWACS	
Northrop Grumman	U.K. NIMROD Royal Maritime Patrol Aircraft	Intercommunications Systems Integration
	Joint-STARS Surveillance Aircraft	Intercommunications Management Systems
Lockheed Martin Corporation	U.S. Coast Guard HU-25 Aircraft	Maritime Surveillance Radar
	U.S. Air Force	Ground Surveillance Radar
	U.S. Navy MH-60S/MH-60R Helicopters	Intercommunications Management Systems
MacDonald Dettwiler	U.S. Navy P-3 Aircraft	Maritime Surveillance Radar and Identification Friend or Foe System
	U.S. Navy MH-60R Helicopter	
Sikorsky Aircraft Company	Canadian Air Force CP-140 Aurora Aircraft Modernization Program	Maritime Surveillance Radar and Identification Friend or Foe System
	S-70B Maritime Surveillance Helicopter	Maritime Surveillance Radar
Sikorsky Aircraft Company	SH-60B Maritime Surveillance Helicopter	Intercommunications Management Systems
	UH-60M Blackhawk Helicopter Upgrade Program	Intercommunications Management Systems

The company manufactures specialized electronic products for a variety of applications. Electronic Information and Communication Systems' products include communication systems, radar systems, information and command and control systems, and mixed-signal application-specific large-scale integrated circuits used in defense, non-military government and commercial markets.

The company specializes in communication systems and products and is a leading manufacturer of aircraft intercommunication systems with products in digital and analog communication management, digital audio distribution and control, and communication systems integration. The company's communication products are used on the U.S. Navy's MH-60R multi-mission and MH-60S utility

helicopters, the United Kingdom's NIMROD surveillance aircraft, the U.S. Air Force C-17A cargo transport, the U.S. Air Force's Joint Surveillance and Target Acquisition Radar System (Joint-STARS) aircraft, and AWACS aircraft.

The company's command and control systems include airborne maritime surveillance radar, ground surveillance radar, weather and search radar systems, air traffic management systems and tactical instrument landing systems. The company provides expertise and equipment for detecting and tracking targets in a maritime environment and flight path management systems for air traffic control applications. Its maritime radar systems, which are used in more than 20 countries, are fitted aboard helicopters, fixed-wing aircraft, and aerostats for use at sea. The company's radar expertise resulted in an award from Northrop Grumman to deliver ground surveillance radar in 2004 for perimeter protection of U.S. Air Force bases around the world. The company also increased its market penetration through an award to develop, manufacture and deliver radar with imaging in both maritime and overland environments for the Canadian Air Force's CP-140 Aurora aircraft program. The company's electronic systems include IFF systems used by the U.S. Air Force and NATO on the AWACS aircraft and tactical microwave landing systems used by the U.S. Navy, NASA and other customers for ground and ship-based applications.

Telephonics is generally a first tier supplier to prime contractors in the defense industry such as Boeing, Lockheed Martin, Northrop Grumman and BAE Systems. With the significant contraction and consolidation that has occurred in the U.S. and international defense industry, major prime contractors worldwide are relying on smaller, key suppliers to provide advances in technology and greater efficiencies to reduce the cost of major systems and platforms. The company believes that this situation creates an opportunity for established, first tier suppliers to capitalize on existing relationships with major prime contractors and play a larger role in the foreseeable future.

The company also manufactures custom and standard, mixed-signal, application-specific large-scale integrated circuits for customers in the security, military telecommunications and multi-media industries.

Sales by Electronic Information and Communication Systems have provided approximately 16% of the company's consolidated revenue in 2004, 14% in 2003 and 16% in 2002.

#### *Backlog*

The funded backlog for Electronic Information and Communication Systems was approximately \$175 million at September 30, 2004, compared to \$159 million at September 30, 2003. Approximately 80% of the current backlog is expected to be filled during fiscal 2005.

#### *Sales and Marketing*

Telephonics has approximately 25 technical business development personnel who act as the focal point for its marketing activities and approximately 40 sales representatives who introduce its products and systems to customers worldwide.

The company participates in a range of long-term defense and non-military government programs, both domestically and internationally. The company has developed a base of installed products in these programs that generate significant recurring revenue and retrofit, spare parts and customer support sales. Due to the inherent complexity of defense electronics, the company believes that its incumbent status on major platforms gives it a competitive advantage in the selection process for the upgrades and enhancements that have characterized defense electronics procurement. Furthermore, the company believes that awards such as the U.S. Navy's MH-60R helicopter program and the recent contract award from Boeing to develop multiple configurations of Telephonics' Secure Digital Intercommunications System in support of the U.S. Air Force's C-130 Avionics Modernization Program, provide competitive advantages when such programs transition from development to the production phase.

In recent years, the segment has also significantly expanded its customer base in international markets. The company's international projects include a contract with BAE Systems as part of the United Kingdom's upgrade of the NIMROD surveillance aircraft and a number of contracts with the Civil Aviation Authority of China for air traffic management systems for Mainland China.

#### *Research and Development*

This segment regularly updates its core technologies through internally funded research and development. The selection of these R&D projects is based on available opportunities in the marketplace, as well as input from the company's customers. Recent internally funded research and development has resulted in the development of an airborne imaging maritime surveillance radar system with advanced technology and greater functionality, as well as an all-digital, totally secure intercommunications management system.

The company believes that it is a technological leader in its core markets and intends to pursue new growth opportunities by leveraging its systems design and engineering capabilities and incumbent position on key platforms. For example, during 2000 Telephonics was awarded a contract for the development of the next generation integrated radio management system for the U.S. Air Force's C-17A air transport. This program transitioned from development to production in fiscal 2003. The company also expects substantial sales growth as it transitions from development to the production phase for the US Navy's MH-60R helicopter program.

In addition to Telephonics' products for defense programs, the company has also applied its technology to produce products for commercial applications such as airborne weather and search radar, air traffic control systems and car-borne and wayside communications and vehicle health monitoring systems for rail cars.

The company believes that its reputation for innovative product design and engineering capabilities, especially in the areas of voice and data communications, radio frequency design, digital signal processing, networking systems, inverse synthetic aperture radar and analog, digital and mixed-signal integrated circuits, has enhanced its ability to secure, retain and expand its participation in defense programs and commercial undertakings. The company is capable of meeting a full range of customer requirements including system requirements definition, product design and development, manufacturing and test, integration and installation, and logistical support. As a result, the company has been successful in developing a number of relationships as an important strategic partner and first tier supplier to various prime contractors.

Telephonics' objective is to anticipate the needs of its core markets and to invest in research and development in an effort to provide solutions well in advance of its competitors. In an effort to ensure customer satisfaction and loyalty, Telephonics often designs its products to exceed customers' minimum specifications, providing its customers with greater performance and flexibility. The company believes that these practices engender increased coordination and communication with its customers at the earliest stages of new program development, thereby increasing the likelihood that Telephonics' products will be selected and integrated as part of a total system solution.

#### *Competition*

The Electronic Information and Communication Systems segment competes with major manufacturers of electronic information and communication systems that have greater financial resources than the company, and with several smaller manufacturers of similar products. The company competes on the basis of technology, design, quality, price and program performance.

## Employees

On a consolidated basis, the company has approximately 5,600 employees located throughout the United States, in Europe and Brazil. Approximately 105 of its employees are covered by a collective bargaining agreement, primarily with an affiliate of the AFL-CIO. The company believes its relationships with its employees are satisfactory.

## Regulation

The company's operations are subject to various environmental, health and employee safety laws. The company has spent money and management has spent time complying with environmental, health and worker safety laws which apply to its operations and facilities and the company expects to continue to do so. Compliance with environmental laws has not historically materially affected the company's capital expenditures, earnings or competitive position. The company does not expect compliance with environmental laws to have a material effect on the company in the future. The company believes that it generally complies with applicable environmental, health and worker safety laws and governmental regulations. Nevertheless, the company cannot guarantee that in the future it will not incur additional costs for compliance or that those costs will not be material.

## Seasonality

Historically the company's revenues and earnings are lowest in its second fiscal quarter and highest in its fourth fiscal quarter.

## Financial Information About Geographic Areas

Revenues, based on the customers' locations, and property, plant and equipment attributed to the United States and all other countries are as follows:

	2004	2003	2002
<b>Revenues by geographic area—</b>			
United States	\$1,045,943,000	\$ 950,686,000	\$ 936,704,000
Germany	73,341,000	57,345,000	41,366,000
United Kingdom	40,370,000	37,899,000	35,650,000
Canada	40,543,000	27,167,000	23,405,000
Poland	35,823,000	35,907,000	31,176,000
All other countries	157,789,000	145,646,000	124,303,000
	<u>\$1,393,809,000</u>	<u>\$1,254,650,000</u>	<u>\$1,192,604,000</u>
<b>Property, plant and equipment by geographic area—</b>			
United States	\$ 113,631,000	\$ 112,517,000	\$ 107,248,000
Germany	86,815,000	55,964,000	39,929,000
All other countries	3,093,000	1,371,000	1,076,000
	<u>\$ 203,539,000</u>	<u>\$ 169,852,000</u>	<u>\$ 148,253,000</u>

## Research and Development

Research and development costs not recoverable under contractual arrangements are charged to expense as incurred. Research and development costs for all business segments were approximately \$17,400,000 in 2004, \$17,000,000 in 2003 and \$17,000,000 in 2002.

## Executive Officers of the Registrant

Name	Age	Served as Officer Since	Positions and Offices
Harvey R. Blau	69	1983	Chairman of the Board and Chief Executive Officer
Robert Balemian	65	1976	President and Chief Financial Officer
Patrick L. Alesia	56	1979	Vice President and Treasurer
Edward I. Kramer	70	1997	Vice President, Administration and Secretary

## Item 2. Properties

The company occupies approximately 4,000,000 square feet of general office, factory and warehouse space and showrooms throughout the United States, in Germany and in Brazil. For a description of the encumbrances on certain of these properties, see Note 2 to the company's consolidated financial statements. The following table sets forth certain information related to the company's major facilities:

Location	Business Segment	Primary Use	Approximate Square Footage	Owned or Leased
Jericho, NY	Corporate Headquarters	Office	10,000	Leased
Farmingdale, NY	Electronic Information and Communication Systems	Manufacturing and research and development	183,000	Owned
Huntington, NY	Electronic Information and Communication Systems	Manufacturing	95,000 44,000	Owned Leased
Mason, OH	Garage Doors Installation Services Specialty Plastic Films	Office and research and development	131,000	Leased
Aschersleben, Germany	Specialty Plastic Films	Manufacturing	290,000	Owned
Dombühl, Germany	Specialty Plastic Films	Manufacturing	124,000	Owned
Augusta, KY	Specialty Plastic Films	Manufacturing	232,000	Owned
Nashville, TN	Specialty Plastic Films	Manufacturing	250,000	Leased
Sao Paulo, Brazil	Specialty Plastic Films	Manufacturing	22,000	Leased
Russia, OH	Garage Doors	Manufacturing	339,000	Owned
Baldwin, WI	Garage Doors	Manufacturing	148,000	Leased
Los Angeles, CA	Garage Doors	Garage door hardware manufacturing	40,000	Leased
Auburn, WA	Garage Doors	Manufacturing	123,000	Leased
Tempe, AZ	Garage Doors	Manufacturing	100,000	Leased

The company also leases approximately 1,900,000 square feet of space for the Garage Doors distribution centers and Installation Services locations in numerous facilities throughout the United States. The company has aggregate minimum annual rental commitments under real estate leases of approximately \$12 million. The majority of the leases have escalation clauses related to increases in real property taxes on the leased property and some for cost of living adjustments. Certain of the leases have renewal and purchase options.

In fiscal 2004, the company purchased land near Sao Paulo, Brazil on which it intends to build a manufacturing facility to expand Specialty Plastic Films' South American operations. Equipment and plant expenditures in fiscal 2005 are anticipated to be approximately \$50 million, primarily in connection with the Specialty Plastic Films capital expansion program. The other plants and equipment of the company are believed to contain sufficient space for current and presently foreseeable needs.

**m 3. Legal Proceedings**

*Department of Environmental Conservation of New York State ("DEC"), with ISC Properties, Inc.* Lightron Corporation ("Lightron"), a wholly-owned subsidiary of the company, once conducted operations at a location in Peekskill in the Town of Cortlandt, New York owned by ISC Properties, Inc., a wholly-owned subsidiary of the company (the "Peekskill Site"). ISC Properties, Inc. sold the Peekskill Site in November 1982.

Subsequently, the company was advised by the DEC that random sampling at the Peekskill Site and in a creek near the Peekskill Site indicated concentrations of solvents and other chemicals common to Lightron's prior plating operations. ISC Properties, Inc. then entered into a consent order with the DEC in 1996 (the "Consent Order") to perform a remedial investigation and prepare a feasibility study. After completing the initial remedial investigation pursuant to the Consent Order, ISC Properties, Inc. was required by the DEC to conduct a supplemental remedial investigation under the Consent Order. In or about August 2004, a report was submitted to the DEC of the findings under the supplemental remedial investigation. No feasibility study has yet been performed pursuant to the Consent Order. Amounts expended to date related to this proceeding aggregate less than \$750,000 over a period that covers more than ten years. Management believes, based on facts presently known to it, that the resolution of this matter will not have a material adverse effect on the company's consolidated financial position, results of operations and cash flows.

**m 4. Submission of Matters to a Vote of Security Holders**

No matters were submitted to a vote of security holders during the fourth quarter of the fiscal year.

**PART II**

**Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

(a) The company's Common Stock is listed for trading on the New York Stock Exchange under the symbol "GFF". The following table shows for the periods indicated the quarterly range in the high and low sales prices for the company's Common Stock:

<b>FISCAL QUARTER ENDED</b>	<b>HIGH</b>	<b>LOW</b>
December 31, 2002	\$ 13.86	\$ 10.27
March 31, 2003	14.49	12.28
June 30, 2003	16.55	12.85
September 30, 2003	19.21	15.75
December 31, 2003	21.18	17.98
March 31, 2004	23.35	19.71
June 30, 2004	23.35	20.52
September 30, 2004	22.75	19.69

(b) As of December 1, 2004, there were approximately 14,700 recordholders of the company's Common Stock.

(c) The company declared and paid a 10% Common Stock dividend during fiscal 2001. No cash dividends on Common Stock were declared or paid during the five fiscal years ended September 30, 2004.

(d) Equity Compensation Plan Information

The following sets forth information relating to the company's equity compensation plans as of September 30, 2004:

<b>Plan Category</b>	<b>Number of securities to be issued upon exercise of outstanding options, warrants and rights (Column a)</b>	<b>Weighted average exercise price of outstanding options, warrants and rights (Column b)</b>	<b>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in Column (a)) (Column c)</b>
Equity compensation plans approved by security holders	4,364,225	\$ 10.91	449,375
Equity compensation plans not approved by security holders	<u>1,376,578</u>	13.29	<u>2,950</u>
<b>Total</b>	<u><b>5,740,803</b></u>	11.48	<u><b>452,325</b></u>

The company's 1998 Employee and Director Stock Option Plan (the "Employee and Director Plan") is the only option plan which was not approved by the company's stockholders. Eligible participants in the Employee and Director Plan include directors, officers and employees of, and consultants to, the company or any of its subsidiaries and affiliates. Under the terms of the Employee and Director Plan, the purchase price of the shares subject to each option granted will not be less than 100% of the fair market value at the date of grant. The terms of each option shall be determined at the time of grant by the Board of Directors or its Compensation Committee.

## (e) Issuer Purchases of Equity Securities

Period	Total Number of Shares Purchased(1)	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet be Purchased under the Plans or Programs
July 1 - 31, 2004	35,000	\$ 22.19	35,000	1,386,695
August 1 - 31, 2004	155,000	20.07	155,000	1,231,695
September 1 - 30, 2004	206,100	21.03	206,100	1,025,595
Total	<u>396,100</u>		<u>396,100</u>	

- (1) All purchases were made in open market transactions. The company's stock buyback program has been in effect since 1993, under which a total of approximately 15 million shares have been purchased for \$183.1 million. In November 2004, the company's Board of Directors authorized an increase of 1 million shares in the number of shares purchasable under the company's stock buyback program, bringing the total authorization at that time to 1.9 million shares. There is no time limit on the repurchases to be made under the plan.

## m 6. Selected Financial Data

	2004	2003	2002	2001	2000
Net sales	<u>\$1,393,809,000</u>	<u>\$1,254,650,000</u>	<u>\$1,192,604,000</u>	<u>\$1,160,125,000</u>	<u>\$1,118,386,000</u>
Income before cumulative effect of a change in accounting principle	\$ 53,859,000	\$ 43,022,000	\$ 34,054,000(1)	\$ 30,593,000	\$ 24,880,000
Cumulative effect of a change in accounting principle	—	—	(24,118,000)	—	(5,290,000)
Net income	<u>\$ 53,859,000</u>	<u>\$ 43,022,000</u>	<u>\$ 9,936,000(1)</u>	<u>\$ 30,593,000</u>	<u>\$ 19,590,000</u>
Per share(2):					
Basic	<u>\$ 1.81</u>	<u>\$ 1.33</u>	<u>\$ 1.03</u>	<u>\$ .93</u>	<u>\$ .75</u>
Diluted	<u>\$ 1.71</u>	<u>\$ 1.28</u>	<u>\$ .97</u>	<u>\$ .92</u>	<u>\$ .75</u>
Total assets	<u>\$ 749,516,000</u>	<u>\$ 678,730,000</u>	<u>\$ 587,694,000</u>	<u>\$ 584,993,000</u>	<u>\$ 582,026,000</u>
Long-term obligations	<u>\$ 154,445,000</u>	<u>\$ 155,483,000</u>	<u>\$ 74,640,000</u>	<u>\$ 108,615,000</u>	<u>\$ 125,916,000</u>

- (1) Operating results for 2002 include a pre-tax charge of \$10,200,000 for the divestiture of an unprofitable peripheral operation (Note 1 of Notes to Consolidated Financial Statements).
- (2) Per share amounts in 2002 and 2000 exclude the cumulative effect of a change in accounting principle.

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

### **OVERVIEW**

Net sales for the year ended September 30, 2004 increased to \$1.4 billion, up from \$1.25 billion in 2003. Income before income taxes increased to \$104.7 million from \$83.1 million last year. The improved operating results reflected higher sales, earnings and operating margins in each of the company's segments.

The company's building products operations enjoyed a solid economy in 2004. The garage door segment finished the year with improved operating results reflecting strong demand and operational improvements. Installation services, the company's other building products operation, also performed well, buoyed by active construction markets and realizing the benefits of the elimination in 2003 of an underperforming location.

Specialty plastic films continued its positive operating trend, but experienced reduced unit volume toward the end of 2004 due primarily to product design changes by its major customer. The customer will be using a narrower, printed film product designed to meet its changing needs, instead of the film laminate product currently supplied by the segment. The conversion to the new printed film has begun and is expected to be completed in the first half of 2005.

Both the specialty plastic films and the garage doors segments performed well, achieving higher sales and profits while market prices for their principal raw materials were rising. In specialty plastic films, raw material (resin) costs increased throughout 2004 in both North America and in Europe. It is estimated that resin cost movement produced a negative impact on 2004 operations of approximately \$5 to \$5.5 million. In garage doors, escalating raw material (steel) costs in the second half of the year negatively impacted 2004 operating income by approximately \$2 to \$2.5 million. These segments increased selling prices during the year, moderating the impact of the raw material price volatility on their 2004 operating results. Upward pressure on raw material prices has continued, and it is expected that these segments' operating results in the near term will continue to be affected until prices stabilize or the segments are able to implement further selling price increases.

Telephonics, the company's electronic information and communication systems segment, achieved a substantial increase in net sales and operating profit compared to 2003. Shipments under a \$35 million contract for ground surveillance radar providing perimeter protection of U.S. Air Force bases were a significant contributor to this segment's operational improvement.

The specialty plastic films segment continued to execute its capital program, adding film capacity in its North American operations and additional printing capacity in Europe and in North America. Capital expenditures by this segment were approximately \$40 million in 2004 and the segment will add substantial additional capacity in fiscal 2005 in its operations in Germany and Brazil. These investments, which will incorporate engineering and technology upgrades, are expected to provide for future geographic expansion and development of new markets.

### **RESULTS OF OPERATIONS**

See Note 7 of "Notes to Consolidated Financial Statements."

## 2004 Compared to Fiscal 2003

Operating results (in thousands) by business segment were as follows:

	Net Sales		Operating Profit	
	2004	2003	2004	2003
Garage doors	\$ 476,581	\$ 428,437	\$ 42,600	\$33,755
Installation services	306,992	289,409	10,909	7,380
Specialty plastic films	411,346	381,910	52,655	44,244
Electronic information and communication systems	220,674	178,693	20,224	14,161
Intersegment revenues	(21,784)	(23,799)	—	—
	<u>\$1,393,809</u>	<u>\$1,254,650</u>	<u>\$126,388</u>	<u>\$99,540</u>

### Garage Doors

Net sales of the garage doors segment increased by \$48.1 million compared to 2003. The increase was due to the higher unit sales (\$33.6 million) driven primarily by strong demand in the professional installing dealer channel and the net effect (\$14.5 million) of improved pricing and favorable product mix.

Operating profit of the garage doors segment increased \$8.8 million compared to last year. Gross margin percentage increased to 33.0%, up from 32.3% in 2003. The higher margin was principally due to increased manufacturing efficiencies driven by unit volume growth and improved product mix, partly offset by the effect of higher raw material (steel) costs. Although the Company has implemented selling price increases, due to the magnitude of the cost increases and competitive conditions, such selling price adjustments have not fully offset the cost increases, resulting in a negative impact on operating income in 2004 of approximately \$2 to \$2.5 million. Selling, general and administrative expenses increased in connection with the sales growth but, as a percentage of sales, declined to 24.1% from 24.4% last year due to effective expense control.

### Installation Services

Net sales of the installation services segment increased by \$17.6 million compared to 2003. The increase was principally due to continued strength in the new construction markets served by the segment.

Operating profit of the installation services segment increased \$3.5 million compared to last year. Gross margin percentage increased to 27.6%, up from 26.9% last year. Selling, general and administrative expenses as a percentage of sales decreased to 24.1% compared to 24.4% last year. The increased profitability was principally due to the substantial sales growth and the positive effect of the elimination in 2003 of an underperforming location.

### Specialty Plastic Films

Net sales of the specialty plastic films segment increased \$29.4 million compared to 2003. The increase was principally due to the impact of favorable product mix (\$13.3 million), the effect of a weaker U.S. dollar on translated foreign sales (\$25.1 million) and improved pricing (\$3.1 million), partly offset by the effect (\$12.1 million) of lower unit sales due to customer product design changes.

Operating profit of the specialty plastic films segment increased \$8.4 million compared to last year. Gross margin percentage increased to 25.6%, up from 23.8%. The increased margin was principally due to the favorable product mix and improved pricing, increased manufacturing efficiencies, exchange rate differences and the recognition last year of costs associated with manufacturing facility expansion, partly offset by the effect of higher raw material (resin) costs and costs attributable to product design changes and capacity growth. It is estimated that resin cost movement produced a negative impact on 2004 operations of approximately \$5 to \$5.5 million.

Raw material price changes will have some effect on future operating results. However, due to the volatility of resin prices and the timing and amount of any related selling price adjustments, the company cannot predict the extent to which the segment's future operating results may be affected.

Selling, general and administrative expenses as a percentage of sales was 12.9% compared to 12.4% last year. Selling, general and administrative expenses increased in connection with the sales growth and increased product development expenditures.

#### Electronic Information and Communication Systems

Net sales of the electronic information and communication systems segment increased \$42.0 million compared to 2003. The increase was principally due to performance under new contract awards, including a \$35 million contract to provide ground surveillance radar that was completed in 2004, and an ongoing airborne surveillance radar program for the Canadian Air Force.

Operating profit of the electronic information and communication systems segment increased \$6.1 million compared to last year primarily due to the sales increase. Gross margin percentage decreased from 26.5% to 24.0%. A lower margin product mix and the effect of cost growth in development programs were partly offset by the positive effect on gross margin percentage of improved performance in military production programs. The effect of the lower gross margin percentage was offset by the sales increase. Selling, general and administrative expenses decreased compared to last year principally due to lower business development costs and research and development expenditures. Selling, general and administrative expenses as a percentage of sales was 15.0% compared to 19.1% last year due to the lower expense level and the substantial sales increase.

#### Interest Expense

Interest expense increased by \$3.2 million compared to 2003 due to the sale in July 2003 of \$130 million of 4% convertible subordinated notes, \$49 million of which was used to repay bank indebtedness.

#### Income Tax Expense

The provision for income taxes for 2003 included \$1.7 million of tax benefits reflecting the resolution of certain previously recorded tax liabilities and the finalization of income taxes on foreign earnings and remittances.

In October 2004 the American Jobs Creation Act of 2004 was enacted. The company is currently assessing the potential impact of this complex legislation. See Note 1 of "Notes to Consolidated Financial Statements."

#### Fiscal 2003 Compared to Fiscal 2002

Operating results (in thousands) by business segment were as follows:

	Net Sales		Operating Profit	
	2003	2002	2003	2002
Garage doors	\$ 428,437	\$ 444,443	\$33,755	\$25,414
Installation services	289,409	278,831	7,380	7,736
Specialty plastic films	381,910	299,585	44,244	40,278
Electronic information and communication systems	178,693	195,430	14,161	15,156
Intersegment revenues	(23,799)	(25,685)	—	—
	<u>\$1,254,650</u>	<u>\$1,192,604</u>	<u>\$99,540</u>	<u>\$88,584</u>

## **Garage Doors**

Net sales of the garage doors segment decreased by \$16.0 million compared to 2002. The decrease was due to the fiscal 2002 divestiture of Atlas, an unprofitable peripheral operation that sold slatted steel coiling doors and related products for commercial users, which had sales in 2002 of \$28 million. The balance of the garage door business had a sales increase of approximately \$12 million from favorable pricing and product mix.

Operating profit of the garage doors segment increased \$8.3 million compared to 2002. The Atlas divestiture accounted for approximately \$4 million of the increase. Gross margin percentage increased to 32.3%, up from 30.7%. The increased margin was due primarily to the Atlas divestiture, improved pricing and product mix and increased manufacturing efficiencies. Selling, general and administrative expenses as a percentage of sales decreased to 24.4%, down from 25.0% in 2002, primarily due to the Atlas divestiture.

## **Installation Services**

Net sales of the installation services segment increased by \$10.6 million compared to 2002. The increase was principally due to the segment's expanded product offering and increased market share.

Operating profit of the installation services segment decreased \$0.4 million compared to 2002. Gross margin percentage decreased to 26.9%, down from 27.6% in 2002. Selling, general and administrative expenses as a percentage of sales decreased to 24.4% compared to 24.8% in 2002. The segment's decreased profitability was principally due to costs to adjust inventory levels and make strategic changes in certain locations which have been underperforming.

## **Specialty Plastic Films**

Net sales of the specialty plastic films segment increased \$82.3 million compared to 2002. The net effect of increased unit volume and product mix (\$34 million), the effect of a weaker U.S. dollar on translated foreign sales (\$28 million), the addition of the Brazilian operation which was acquired at the end of fiscal 2002 (\$10 million) and selling price adjustments to pass raw material cost increases to customers (\$10 million) were the principal reasons for the increase.

Operating profit of the specialty plastic films segment increased \$4.0 million compared to 2002. Gross margin percentage decreased to 23.8%, down from 25.4%. The lower margin percentage was principally due to the excess of raw material (resin) cost increases over selling price adjustments and costs associated with facility expansion for current and new products, partly offset by increased manufacturing efficiencies. The effect of the lower margin percentage on segment operating results was offset by the net positive effect of increased volume and favorable product mix, and exchange rate differences. Selling, general and administrative expenses as a percentage of sales was 12.4%, up from 12.1% in 2002, due to product development expenditures and higher freight and administrative costs associated with the segment's European operations in support of the sales growth.

## **Electronic Information and Communication Systems**

Net sales of the electronic information and communication systems segment decreased \$16.7 million compared to 2002. The decrease was primarily due to delays in anticipated contract awards and continued softness in international markets for radar products, partly offset by sales growth in the last fiscal quarter from certain military production programs.

Operating profit of the electronic information and communication systems segment decreased \$1.0 million compared to 2002 primarily due to the sales decrease. Gross margin percentage increased to 26.5%, up from 24.2%. The increased gross margin percentage is primarily due to manufacturing efficiencies in 2003, and lower margins in 2002 in connection with certain development phase programs.

Selling, general and administrative expenses increased over 2002 due primarily to higher research and development expenditures and new business development costs; due to the sales decrease these expenses increased to 19.1% as a percentage of sales, up from 16.9%.

#### **Interest Expense**

Interest expense increased by \$0.3 million compared to 2002 due to the sale in July 2003 of \$130 million of 4% convertible subordinated notes, \$49 million of which was used to repay bank indebtedness.

#### **Income Tax Expense**

The company's provision for income taxes included benefits of \$1.7 million in 2003 and \$2.0 million in 2002 reflecting the resolution of certain previously recorded tax liabilities principally in connection with completed examinations of prior years' tax returns.

#### **LIQUIDITY AND CAPITAL RESOURCES**

Cash flow generated by operations for 2004 was \$105.8 million compared to \$67.5 million last year and working capital was \$270.0 million at September 30, 2004. Operating cash flows increased compared to last year due primarily to higher profitability and changes in operating assets and current liabilities.

Net cash used in investing activities during 2004 was \$59.2 million. The company had capital expenditures of \$56.1 million, principally made in connection with the ongoing capital expansion program in the specialty plastic films segment. Capital expenditures in 2005 are anticipated to be at approximately the same level as 2004, and are expected to be funded principally by existing cash balances and operating cash flows. These investments, which will add substantial additional capacity in specialty plastic films' operations in Germany and Brazil, will incorporate engineering and technology upgrades expected to provide for future geographic expansion and development of new markets.

Net cash used by financing activities during 2004 was \$29.3 million. Approximately \$28.4 million was used to acquire a total of 1.3 million shares of Common Stock. The company's board of directors has authorized a one million share increase in the company's stock buyback program, bringing the unused authorization to approximately 2 million shares. Additional purchases under the company's stock buyback program will be made from time to time, depending on market conditions, at prices deemed appropriate by management.

In connection with its outstanding 4% convertible subordinated notes (the "Notes"), upon conversion the company had the option of delivering cash or a combination of cash and shares of Common Stock in exchange for tendered Notes. The company has irrevocably elected to pay Noteholders at least \$1,000 in cash for each \$1,000 principal amount of Notes presented for conversion. The excess of the value of the company's Common Stock that would have been issuable upon conversion over the cash delivered will be paid to Noteholders in shares of the company's Common Stock. See Note 2 of "Notes to Consolidated Financial Statements."

## Contractual Obligations

At September 30, 2004, payments to be made pursuant to significant contractual obligations are as follows (000's omitted):

<u>Year</u>	<u>Purchase Obligations</u>	<u>Capital Expenditures</u>	<u>Operating Leases</u>	<u>Debt Repayments</u>	<u>Total</u>
2005	\$73,700	\$10,100	\$29,100	\$ 8,300	\$121,200
2006	7,700	—	18,900	9,400	36,000
2007	3,200	—	14,700	13,600	31,500
2008	2,800	—	8,800	1,500	13,100
2009	1,600	—	3,600	—	5,200
Thereafter	300	—	3,500	130,000	133,800

The purchase obligations are generally for the purchase of goods and services in the ordinary course of business. The company uses blanket purchase orders to communicate expected requirements to certain of its vendors. Purchase obligations reflect those purchase orders where the commitment is considered to be firm. Purchase obligations that extend beyond 2005 are principally related to long-term contracts received from customers of the electronic information and communication systems segment.

A wholly owned subsidiary of the company has a lease agreement that limits dividends and advances it may pay to the parent company. The agreement permits the payment of income taxes based on a tax sharing arrangement, and dividends based on a percentage of the subsidiary's net income. At September 30, 2004 the subsidiary had net assets of approximately \$330 million. The company expects that cash flows from operations, together with existing cash, bank lines of credit and lease line availability, should be adequate to satisfy contractual obligations and finance presently anticipated working capital and capital expenditure requirements.

## ACCOUNTING POLICIES AND PRONOUNCEMENTS

### Critical Accounting Policies

The company's significant accounting policies are set forth in Note 1 of "Notes to Consolidated Financial Statements." The following discussion of critical accounting policies addresses those policies that require management judgment and estimates and are most important in determining the company's operating results and financial condition.

The company recognizes revenues for most of its operations when title and the risks of ownership pass to its customers. Provisions for estimated losses resulting from the inability of our customers to remit payments are recorded in the company's consolidated financial statements. Judgment is required to estimate the ultimate realization of receivables, including specific reviews for collectibility when, based on an evaluation of facts and circumstances, the company may be unable to collect amounts owed to it, as well as estimation of overall collectibility of those receivables that have not required specific review.

The company's electronic information and communication systems segment does a significant portion of its business under long-term contracts. This unit generally recognizes contract-related revenue and profit using the percentage of completion method of accounting, which relies on estimates of total expected contract costs. A significant amount of judgment is required to estimate contract costs, including estimating many variables such as costs for material, labor and subcontracting costs, as well as applicable indirect costs. The company follows this method of accounting for its long-term contracts since reasonably dependable estimates of costs applicable to various elements of a contract can be made. Since the financial reporting of these contracts depends on estimates, recognized revenues and profit are subject to revisions as contracts progress to completion. Contract cost estimates are generally updated quarterly. Revisions in

revenue and profit estimates are reflected in the period in which the circumstances requiring the revision become known. Provisions are made currently for anticipated losses on uncompleted contracts.

Inventory is stated at the lower of cost (principally first-in, first-out) or market. Inventory valuation requires the company to use judgment to estimate any necessary allowances for excess, slow-moving and obsolete inventory, which estimates are based on assessments about future demands, market conditions and management actions.

The company sponsors several defined benefit pension plans. The amount of the company's liability for pension benefits and the amount of pension expense recognized in the financial statements is determined using actuarial assumptions such as the discount rate, the long-term rate of return on plan assets and the rate of compensation increases. Judgment is required to annually determine the rates to be used in performing the actuarial calculations. The company evaluates these assumptions with its actuarial and investment advisors and believes that they are within accepted industry ranges. In 2004 the discount rate was lowered to reflect current market conditions.

Upon acquisition, the excess of cost over the fair value of an acquired business' net assets is recorded as goodwill. Annually in its fourth fiscal quarter, the company evaluates goodwill for impairment by comparing the carrying value of its operating units to estimates of the related operation's fair values. An evaluation would also be performed if an event occurs or circumstances change such that the estimated fair value of the company's operating units would be reduced below its carrying value.

The company depreciates property, plant and equipment on a straight-line basis over their estimated useful lives, which are based upon the nature of the assets and their planned use in the company's operations. Events and circumstances such as changes in operating plans, technological change or regulatory matters could affect the manner in which long-lived assets are held and used. Judgment is required to establish depreciable lives for operating assets and to evaluate events or circumstances for indications that the value of long-lived assets has been impaired.

Income taxes include current year amounts that are payable or refundable and deferred taxes reflecting the company's estimate of the future tax consequences of temporary differences between amounts reflected in the financial statements and their tax basis. Changes in tax laws and rates may affect the amount of recorded deferred tax assets and liabilities.

#### **Recent Accounting Pronouncements**

In October 2004 the Financial Accounting Standards Board ratified the consensus of the Emerging Issues Task Force on Issue 04-8, "The Effect of Contingently Convertible Instruments on Diluted Earnings per Share." This consensus requires contingently convertible debt to be included in the calculation of diluted earnings per share even though related market based contingencies have not been met. Holders of the company's 4% convertible subordinated notes are entitled to convert their notes into the company's Common Stock upon the occurrence of certain events and on the terms described in Note 2 of "Notes to Consolidated Financial Statements". Shares potentially issuable upon conversion will be included in the calculation of diluted earnings per share using the "treasury stock" method. Adoption of Issue 04-8, which becomes effective for fiscal 2005, will not affect the company's fiscal 2004 or previously reported diluted earnings per share amounts. See Note 1 of "Notes to Consolidated Financial Statements."

#### **FORWARD-LOOKING STATEMENTS**

All statements other than statements of historical fact included in this annual report, including without limitation statements regarding the company's financial position, business strategy, and the plans and objectives of the company's management for future operations, are forward-looking statements. When used in this annual report, words such as "anticipate", "believe", "estimate", "expect", "intend" and similar

expressions, as they relate to the company or its management, identify forward-looking statements. Such forward-looking statements are based on the beliefs of the company's management, as well as assumptions made by and information currently available to the company's management. Actual results could differ materially from those contemplated by the forward-looking statements as a result of certain factors, including but not limited to, business and economic conditions, competitive factors and pricing pressures, capacity and supply constraints. Such statements reflect the views of the company with respect to future events and are subject to these and other risks, uncertainties and assumptions relating to the operations, results of operations, growth strategy and liquidity of the company. Readers are cautioned not to place undue reliance on these forward-looking statements. The company does not undertake any obligation to release publicly any revisions to these forward-looking statements to reflect future events or circumstances or to reflect the occurrence of unanticipated events.

**·m 7A. *Quantitative and Qualitative Disclosure about Market Risk***

Management does not believe that there is any material market risk exposure with respect to foreign currency, derivatives or other financial instruments that would require disclosure under this item.

**·m 8. *Financial Statements and Supplementary Data***

The financial statements of the company and its subsidiaries and the report thereon of PricewaterhouseCoopers LLP, dated November 30, 2004 for the fiscal years ended September 30, 2004, 2003 and 2002 are included herein:

- Report of Independent Registered Public Accounting Firm.
- Consolidated Balance Sheets at September 30, 2004 and 2003.
- Consolidated Statements of Income, Cash Flows and Shareholders' Equity for the years ended September 30, 2004, 2003 and 2002.
- Notes to Consolidated Financial Statements.

## **Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Shareholders of Griffon Corporation:

In our opinion, the consolidated financial statements listed in the index appearing under Item 15(a)(1) on page 45 present fairly, in all material respects, the financial position of Griffon Corporation and its subsidiaries (the "Company") at September 30, 2004 and 2003, and the results of their operations and their cash flows for each of the three years in the period ended September 30, 2004 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedules listed in the index appearing under item 15(a)(2) on page 45 present fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedules based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). 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, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 1, the Company changed the manner in which it accounts for goodwill and other intangible assets upon adoption of Statement of Financial Accounting Standards No. 142 ("SFAS 142") "Goodwill and Other Intangible Assets", on October 1, 2001.

PricewaterhouseCoopers LLP  
New York, New York  
November 30, 2004

**GRIFFON CORPORATION**  
**CONSOLIDATED BALANCE SHEETS**

	September 30	
	2004	2003
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 88,047,000	\$ 69,816,000
Accounts receivable, less allowance for doubtful accounts of \$8,729,000 in 2004 and \$7,965,000 in 2003 (Note 1)	174,938,000	173,942,000
Contract costs and recognized income not yet billed (Note 1)	32,700,000	46,642,000
Inventories (Note 1)	141,567,000	114,003,000
Prepaid expenses and other current assets	43,381,000	39,280,000
Total current assets	<u>480,633,000</u>	<u>443,683,000</u>
PROPERTY, PLANT AND EQUIPMENT, at cost, net of depreciation and amortization (Note 1)	<u>203,539,000</u>	<u>169,852,000</u>
<b>OTHER ASSETS:</b>		
Costs in excess of fair value of net assets of businesses acquired, net (Note 1)	50,554,000	49,983,000
Other	14,790,000	15,212,000
	<u>65,344,000</u>	<u>65,195,000</u>
	<u>\$ 749,516,000</u>	<u>\$ 678,730,000</u>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Notes payable and current portion of long-term debt (Note 2)	\$ 14,490,000	\$ 12,161,000
Accounts payable	85,589,000	69,555,000
Accrued liabilities (Note 1)	96,288,000	95,372,000
Income taxes (Note 1)	14,264,000	16,975,000
Total current liabilities	<u>210,631,000</u>	<u>194,063,000</u>
Long-Term Debt (Note 2)	<u>154,445,000</u>	<u>155,483,000</u>
Other Liabilities and Deferred Credits	<u>40,293,000</u>	<u>27,539,000</u>
Commitments and Contingencies (Note 5)		
Minority Interest	<u>25,175,000</u>	<u>17,591,000</u>
<b>SHAREHOLDERS' EQUITY (Note 3):</b>		
Preferred stock, par value \$.25 per share, authorized 3,000,000 shares, no shares issued	—	—
Common stock, par value \$.25 per share, authorized 85,000,000 shares, issued 38,006,139 shares in 2004 and 36,625,717 shares in 2003	9,502,000	9,156,000
Capital in excess of par value	115,160,000	97,721,000
Retained earnings	338,485,000	284,626,000
Treasury shares, at cost, 9,014,509 common shares in 2004 and 7,165,919 common shares in 2003	(136,147,000)	(97,902,000)
Accumulated other comprehensive income (Note 1)	(5,051,000)	(6,064,000)
Deferred compensation	<u>(2,977,000)</u>	<u>(3,483,000)</u>
Total shareholders' equity	<u>318,972,000</u>	<u>284,054,000</u>
	<u>\$ 749,516,000</u>	<u>\$ 678,730,000</u>

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

**GRIFFON CORPORATION**  
**CONSOLIDATED STATEMENTS OF INCOME**

	Years ended September 30		
	2004	2003	2002
Net sales	\$ 1,393,809,000	\$ 1,254,650,000	\$ 1,192,604,000
Cost of sales:			
Products	992,648,000	899,257,000	854,881,000
Divested operation inventory charge (Note 1)	—	—	3,200,000
	<u>992,648,000</u>	<u>899,257,000</u>	<u>858,081,000</u>
	401,161,000	355,393,000	334,523,000
Selling, general and administrative expenses (Note 1)	289,979,000	268,990,000	260,006,000
Loss on divestiture (Note 1)	—	—	7,000,000
	<u>111,182,000</u>	<u>86,403,000</u>	<u>67,517,000</u>
Other income (expense):			
Interest expense	(8,066,000)	(4,867,000)	(4,569,000)
Interest income	1,070,000	682,000	866,000
Other, net	563,000	847,000	589,000
	<u>(6,433,000)</u>	<u>(3,338,000)</u>	<u>(3,114,000)</u>
Income before income taxes	104,749,000	83,065,000	64,403,000
Provision for income taxes (Note 1)	38,757,000	29,876,000	22,506,000
Income before minority interest and cumulative effect of a change in accounting principle	65,992,000	53,189,000	41,897,000
Minority interest	(12,133,000)	(10,167,000)	(7,843,000)
Income before cumulative effect of a change in accounting principle	53,859,000	43,022,000	34,054,000
Cumulative effect of a change in accounting principle, net of income taxes (Note 1)	—	—	(24,118,000)
Net income	<u>\$ 53,859,000</u>	<u>\$ 43,022,000</u>	<u>\$ 9,936,000</u>
Basic earnings per share of common stock (Note 1):			
Income before cumulative effect of a change in accounting principle	\$ 1.81	\$ 1.33	\$ 1.03
Cumulative effect of a change in accounting principle	—	—	(.73)
	<u>\$ 1.81</u>	<u>\$ 1.33</u>	<u>\$ .30</u>
Diluted earnings per share of common stock (Note 1):			
Income before cumulative effect of a change in accounting principle	\$ 1.71	\$ 1.28	\$ .97
Cumulative effect of a change in accounting principle	—	—	(.69)
	<u>\$ 1.71</u>	<u>\$ 1.28</u>	<u>\$ .28</u>

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

**GRIFFON CORPORATION**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Years ended September 30		
	2004	2003	2002
Cash flows from operating activities:			
Net income	\$ 53,859,000	\$ 43,022,000	\$ 9,936,000
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	28,331,000	26,182,000	22,637,000
Gain on sale of real estate	—	—	(1,974,000)
Loss on divestiture	—	—	10,200,000
Minority interest	12,133,000	10,167,000	7,843,000
Cumulative effect of a change in accounting principle	—	—	24,118,000
Provision for losses on accounts receivable	2,785,000	1,879,000	1,407,000
Deferred income taxes	8,336,000	4,535,000	(3,275,000)
Change in assets and liabilities:			
(Increase) decrease in accounts receivable and contract costs and recognized income not yet billed	11,545,000	(12,621,000)	4,214,000
Increase in inventories	(27,313,000)	(9,832,000)	(8,673,000)
(Increase) decrease in prepaid expenses and other assets	(4,655,000)	(1,257,000)	1,951,000
Increase in accounts payable, accrued liabilities and income taxes payable	14,632,000	4,919,000	8,637,000
Other changes, net	6,128,000	492,000	5,631,000
Total adjustments	51,922,000	24,464,000	72,716,000
Net cash provided by operating activities	105,781,000	67,486,000	82,652,000
Cash flows from investing activities:			
Acquisition of property, plant and equipment	(56,124,000)	(44,049,000)	(24,300,000)
Proceeds from divestiture	—	3,826,000	—
Proceeds from sale of real estate	—	—	2,638,000
Acquired businesses	—	(13,773,000)	(4,598,000)
Increase in equipment lease deposits	(3,787,000)	(1,261,000)	(2,816,000)
Other, net	708,000	—	(789,000)
Net cash used in investing activities	(59,203,000)	(55,257,000)	(29,865,000)
Cash flows from financing activities:			
Purchase of treasury shares	(28,400,000)	(60,655,000)	(11,874,000)
Proceeds from issuance of long-term debt	12,393,000	157,193,000	4,000,000
Payments of long-term debt	(12,631,000)	(78,259,000)	(39,217,000)
Increase (decrease) in short-term borrowings	103,000	1,072,000	(963,000)
Exercise of stock options	5,473,000	1,288,000	6,788,000
Payment of debt issuance costs	—	(4,218,000)	—
Distributions to minority interest	(5,974,000)	(6,362,000)	(6,252,000)
Other, net	(269,000)	—	(504,000)
Net cash provided (used) by financing activities	(29,305,000)	10,059,000	(48,022,000)
Effect of exchange rate changes on cash and cash equivalents	958,000	1,779,000	888,000
Net increase in cash and cash equivalents	18,231,000	24,067,000	5,653,000
Cash and cash equivalents at beginning of year	69,816,000	45,749,000	40,096,000
Cash and cash equivalents at end of year	<u>\$ 88,047,000</u>	<u>\$ 69,816,000</u>	<u>\$ 45,749,000</u>

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

**GRIFFON CORPORATION**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**  
**For the Years Ended September 30, 2004, 2003 and 2002**

	COMMON STOCK		CAPITAL IN	RETAINED	TREASURY SHARES		ACCUMULATED	DEFERRED	COMPREHENSIVE
	SHARES	PAR VALUE	EXCESS OF PAR VALUE	EARNINGS	SHARES	COST	INCOME	COMPENSATION	INCOME
Balances, September 30, 2001	<u>35,023,437</u>	<u>\$ 8,756,000</u>	<u>\$ 79,761,000</u>	<u>\$231,668,000</u>	<u>2,284,802</u>	<u>\$ 19,230,000</u>	<u>\$ (4,573,000)</u>	<u>\$ 2,529,000</u>	
Foreign currency translation adjustment	—	—	—	—	—	—	(4,660,000)	—	\$ (4,660,000)
Minimum pension liability adjustment	—	—	—	—	—	—	(3,013,000)	—	(3,013,000)
Net income	—	—	—	9,936,000	—	—	—	—	<u>9,936,000</u>
Comprehensive income (Note 1)	—	—	—	—	—	—	—	—	<u>\$ 2,263,000</u>
Amortization of deferred compensation	—	—	—	—	—	—	—	(580,000)	—
ESOP purchase of Common Stock	—	—	—	—	—	—	—	2,000,000	—
Purchase of treasury shares	—	—	—	—	982,181	16,971,000	—	—	—
Exercise of stock options	1,307,025	327,000	9,608,000	—	—	—	—	—	—
Tax benefit from exercise of stock options	—	—	4,661,000	—	—	—	—	—	—
Other	<u>6,730</u>	<u>1,000</u>	<u>747,000</u>	—	—	—	—	<u>100,000</u>	—
Balances, September 30, 2002	<u>36,337,192</u>	<u>9,084,000</u>	<u>94,777,000</u>	<u>241,604,000</u>	<u>3,266,983</u>	<u>36,201,000</u>	<u>(12,246,000)</u>	<u>4,049,000</u>	
Foreign currency translation adjustment	—	—	—	—	—	—	7,921,000	—	\$ 7,921,000
Minimum pension liability adjustment	—	—	—	—	—	—	(1,739,000)	—	(1,739,000)
Net income	—	—	—	43,022,000	—	—	—	—	<u>43,022,000</u>
Comprehensive income (Note 1)	—	—	—	—	—	—	—	—	<u>\$ 49,204,000</u>
Amortization of deferred compensation	—	—	—	—	—	—	—	(666,000)	—
Purchase of treasury shares	—	—	—	—	3,825,284	60,655,000	—	—	—
Exercise of stock options	281,225	70,000	1,923,000	—	73,652	1,046,000	—	—	—
Tax benefit from exercise of stock options	—	—	854,000	—	—	—	—	—	—
Other	<u>7,300</u>	<u>2,000</u>	<u>167,000</u>	—	—	—	—	<u>100,000</u>	—
Balances, September 30, 2003	<u>36,625,717</u>	<u>9,156,000</u>	<u>97,721,000</u>	<u>284,626,000</u>	<u>7,165,919</u>	<u>97,902,000</u>	<u>(6,064,000)</u>	<u>3,483,000</u>	
Foreign currency translation adjustment	—	—	—	—	—	—	3,018,000	—	\$ 3,018,000
Minimum pension liability adjustment	—	—	—	—	—	—	(2,005,000)	—	(2,005,000)
Net income	—	—	—	53,859,000	—	—	—	—	<u>53,859,000</u>
Comprehensive income (Note 1)	—	—	—	—	—	—	—	—	<u>\$ 54,872,000</u>
Amortization of deferred compensation	—	—	—	—	—	—	—	(606,000)	—
Purchase of treasury shares	—	—	—	—	1,348,400	28,400,000	—	—	—
Exercise of stock options	1,375,772	344,000	11,220,000	—	500,190	9,845,000	—	—	—
Tax benefit from exercise of stock options	—	—	5,796,000	—	—	—	—	—	—
Other	<u>4,650</u>	<u>2,000</u>	<u>423,000</u>	—	—	—	—	<u>100,000</u>	—
Balances, September 30, 2004	<u>38,006,139</u>	<u>\$ 9,502,000</u>	<u>\$ 115,160,000</u>	<u>\$338,485,000</u>	<u>9,014,509</u>	<u>\$136,147,000</u>	<u>\$ (5,051,000)</u>	<u>\$ 2,977,000</u>	

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

**GRIFFON CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE 1—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:**

**Consolidation**

The consolidated financial statements include the accounts of Griffon Corporation and all subsidiaries. All significant intercompany items have been eliminated in consolidation.

**Use of estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amount of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Cash flows and credit risk**

The company considers all highly liquid investments purchased with an initial maturity of three months or less to be cash equivalents. Cash payments for interest were approximately \$8,557,000, \$3,995,000 and \$5,522,000 in 2004, 2003 and 2002, respectively.

A substantial portion of the company's trade receivables are from customers of the garage doors and installation services segments whose financial condition is dependent on the construction and related retail sectors of the economy.

The allowance for doubtful accounts reflects the estimated accounts receivable that will not be collected due to credit losses and customer returns and allowances. Provisions for estimated uncollectible accounts receivable are made for individual accounts based upon specific facts and circumstances including criteria such as their age, amount, and customer standing. Provisions are also made for other accounts receivable not specifically reviewed based upon historical experience.

**Other comprehensive income**

Comprehensive income is presented in the consolidated statements of shareholders' equity and consists of net income and other items of comprehensive income such as minimum pension liability adjustments and foreign currency translation adjustments.

The components of accumulated other comprehensive income at September 30, 2004 were a foreign currency translation adjustment of \$4,066,000 and a minimum pension liability adjustment, net of tax, of (\$9,117,000). At September 30, 2003, accumulated comprehensive income consisted of a foreign currency translation adjustment of \$1,048,000, and a minimum pension liability adjustment, net of tax, of (\$7,112,000).

**Foreign currency**

The financial statements of foreign subsidiaries were prepared in their respective local currencies and translated into U.S. Dollars based on the current exchange rates at the end of the period for the balance sheet and average exchange rates for results of operations.

**Revenue recognition**

Sales are generally recorded as products are shipped and title and risk of ownership have passed to customers.

The Electronic Information and Communication Systems segment records sales and gross profits on its long-term contracts on a percentage-of-completion basis. The percentage of completion method is used for those construction-type contracts where the performance is anticipated to take more than one year. Contract claims are recognized in revenue to the extent of costs incurred when their amounts can be reliably estimated and realization is probable. The company determines sales and gross profits by relating costs incurred to current estimates of total manufacturing costs of such contracts. General and administrative expenses are expensed as incurred. Revisions in estimated profits are made in the period in which the circumstances requiring the revision become known. Provisions are made currently for anticipated losses on uncompleted contracts.

“Contract costs and recognized income not yet billed” consists of recoverable costs and accrued profit on long-term contracts for which billings had not been presented to the customers because the amounts were not billable at the balance sheet date, net of progress payments of \$3,530,000 at September 30, 2004 and \$985,000 at September 30, 2003. Amounts become billable when applicable contractual terms are met. Such terms vary, and include the achievement of specified milestones, product delivery and stipulated progress payments. Substantially all such amounts will be billed and collected within one year.

**Inventories**

Inventories, stated at the lower of cost (first-in, first-out or average) or market, include material, labor and manufacturing overhead costs and are comprised of the following:

	September 30	
	2004	2003
Finished goods	\$ 57,654,000	\$ 50,270,000
Work in process	53,498,000	42,029,000
Raw materials and supplies	30,415,000	21,704,000
	<u>\$141,567,000</u>	<u>\$114,003,000</u>

**Property, plant and equipment**

Depreciation of property, plant and equipment is provided on a straight-line basis over the estimated useful lives of the assets.

Estimated useful lives for property, plant and equipment are as follows: buildings and building improvements—25 to 40 years; machinery and equipment—2 to 15 years and leasehold improvements—over the life of the lease or life of the improvement, whichever is shorter. The original cost of fully-depreciated property, plant and equipment remaining in use at September 30, 2004 is approximately \$60,000,000.

Property, plant and equipment consists of the following:

	<b>September 30</b>	
	<b>2004</b>	<b>2003</b>
Land, buildings and building improvements	\$ 66,003,000	\$ 60,276,000
Machinery and equipment	293,764,000	244,808,000
Leasehold improvements	14,153,000	13,261,000
	<u>373,920,000</u>	<u>318,345,000</u>
Less—Accumulated depreciation and amortization	170,381,000	148,493,000
	<u>\$203,539,000</u>	<u>\$169,852,000</u>

**Acquisitions and costs in excess of fair value of net assets of businesses acquired (“Goodwill”)**

In June 2002, the company acquired a 60% interest in Isofilme Ltda., a Brazilian manufacturer of plastic hygienic and specialty films, for approximately \$18,000,000, including \$13,800,000 paid in fiscal 2003.

The above acquisition has been accounted for as a purchase and resulted in an increase in goodwill of \$661,000 in 2003 and \$15,797,000 in 2002. Currency translation adjustments related to specialty plastic films’ foreign operations increased goodwill by \$571,000 in 2004 and \$4,300,000 in 2003.

Effective October 1, 2001, the company adopted Statement of Financial Accounting Standards No. 142, “Goodwill and Other Intangible Assets,” (SFAS 142). SFAS 142 addresses accounting and reporting for acquired goodwill. It eliminates the previous requirement to amortize goodwill and establishes new requirements with respect to evaluating goodwill and impairment. With the assistance of a third-party valuation expert, the company ascertained the fair value of its reporting units as part of adopting SFAS 142 and that goodwill of the installation services segment was impaired pursuant to the new standard.

The fair value of the installation services segment used in computing the impairment loss was determined through a combination of market based approaches and present value techniques. Results for the year ended September 30, 2002 included the related cumulative effect of a change in accounting principle in the amount of \$24,118,000 (net of an income tax benefit of \$2,457,000) to reflect the impairment. Upon acquisition, the excess of cost over the fair value of an acquired business’ net assets is recorded as goodwill. Annually in its fourth fiscal quarter, the company evaluates goodwill for impairment by comparing the carrying value of its operating units to estimates of the related operation’s fair values. An evaluation would also be performed if an event occurs or circumstances change such that the estimated fair value of the company’s operating units would be reduced below its carrying value.

**Income taxes**

The company provides for income taxes using the liability method. Deferred taxes reflect the net tax effects of temporary differences between the carrying amount of assets and liabilities for financial reporting and income tax purposes, as determined under enacted tax laws and rates. The effect of changes in tax laws or rates is accounted for in the period of enactment.

The provision for income taxes is comprised of the following:

	<b>2004</b>	<b>2003</b>	<b>2002</b>
Current	\$30,421,000	\$25,341,000	\$25,781,000
Deferred	8,336,000	4,535,000	(3,275,000)
	<u>\$38,757,000</u>	<u>\$29,876,000</u>	<u>\$22,506,000</u>

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Federal	\$18,407,000	\$10,947,000	\$ 9,193,000
Foreign	16,907,000	16,386,000	12,206,000
State and local	3,443,000	2,543,000	1,107,000
	<u>\$38,757,000</u>	<u>\$29,876,000</u>	<u>\$22,506,000</u>

The components of income before income taxes are as follows:

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Domestic	\$ 57,597,000	\$43,534,000	\$34,586,000
Foreign	47,152,000	39,531,000	29,817,000
	<u>\$104,749,000</u>	<u>\$83,065,000</u>	<u>\$64,403,000</u>

The provision for income taxes includes current U.S. Federal income taxes of \$9,580,000 in 2004, \$5,152,000 in 2003 and \$12,468,000 in 2002. The deferred taxes result primarily from differences in the reporting of depreciation, the allowance for doubtful accounts and other nondeductible accruals. Prepaid expenses and Other Assets at September 30, 2004 and 2003 include deferred income tax assets aggregating \$12,400,000 and \$11,497,000, respectively, attributable primarily to nondeductible accruals and allowances. Other liabilities and deferred credits at September 30, 2004 included deferred taxes of \$9,348,000, attributable primarily to depreciation. The company has not recorded deferred income taxes on the undistributed earnings of its foreign subsidiaries because of management's intent to indefinitely reinvest such earnings and because they can be repatriated with no additional tax liability. At September 30, 2004, the company's share of the undistributed earnings of the foreign subsidiaries amounted to approximately \$27,000,000.

In October 2004 the American Jobs Creation Act of 2004 (the "ACT") was signed into law. The new law provides for phased elimination of the Foreign Sales Corporation/Extraterritorial Income tax deduction over 2005 and 2006, and also creates a new deduction for qualified domestic production activities that is phased in from 2006 through 2010. The Act also creates a temporary incentive for multinational corporations to repatriate earnings of foreign subsidiaries. The company is currently assessing the potential impact of this complex legislation and additional interpretations are expected from the Department of the Treasury.

Cash payments for income taxes were \$26,960,000, \$30,150,000 and \$31,500,000 in 2004, 2003 and 2002, respectively.

The company's provision for income taxes includes a benefit of \$1,700,000 in 2003 and \$2,000,000 in 2002 reflecting the resolution of certain previously recorded tax liabilities principally in connection with completed examinations of prior years' tax returns. The following table indicates the significant elements contributing to the difference between the U.S. Federal statutory tax rate and the company's effective tax rate:

	<u>2004</u>	<u>2003</u>	<u>2002</u>
U.S. Federal statutory tax rate	35.0%	35.0%	35.0%
State and foreign income taxes	2.5	4.2	5.0
Resolution of contingencies	—	(2.0)	(3.1)
Other	(.5)	(1.2)	(2.0)
Effective tax rate	<u>37.0%</u>	<u>36.0%</u>	<u>34.9%</u>

**Research and development costs and shipping and handling costs**

Research and development costs not recoverable under contractual arrangements are charged to selling, general and administrative expense as incurred. Approximately \$17,400,000, \$17,000,000 and \$17,000,000 in 2004, 2003 and 2002, respectively, was incurred on such research and development.

Selling, general and administrative expenses include shipping and handling costs of \$34,000,000 in 2004, \$30,100,000 in 2003 and \$29,000,000 in 2002.

**Accrued liabilities**

Accrued liabilities included the following at September 30:

	<u>2004</u>	<u>2003</u>
Payroll and other employee benefits	\$45,700,000	\$39,000,000
Insurance and related accruals	12,000,000	12,400,000

**Earnings per share (EPS)**

Basic EPS is calculated by dividing income available to common shareholders by the weighted average number of shares of Common Stock outstanding during the period. The weighted average number of shares of Common Stock used in determining basic EPS was 29,762,000 in 2004, 32,289,000 in 2003 and 33,250,000 in 2002.

Diluted EPS is calculated by dividing income available to common shareholders by the weighted average number of shares of Common Stock outstanding plus additional common shares that could be issued in connection with potentially dilutive securities. The weighted average number of shares of Common Stock used in determining diluted EPS was 31,586,000 in 2004, 33,597,000 in 2003 and 34,951,000 in 2002 and reflects additional shares in connection with stock option and other stock-based compensation plans.

In October 2004 the Financial Accounting Standards Board ratified the consensus of the Emerging Issues Task Force on Issue 04-8, "The Effect of Contingently Convertible Instruments on Diluted Earnings per Share." This consensus requires contingently convertible debt to be included in the calculation of diluted earnings per share even though related market based contingencies have not been met. Holders of the company's 4% convertible subordinated notes are entitled to convert their notes upon the occurrence of certain events and on the terms described in Note 2. Shares potentially issuable upon conversion will be included in the calculation of diluted earnings per share using the "treasury stock" method. Adoption of Issue 04-8, which becomes effective for fiscal 2005, will not affect the company's fiscal 2004 or previously reported diluted earnings per share amounts.

**Divested operation**

In the fourth quarter of fiscal 2002 the company adopted a plan to divest an unprofitable peripheral garage door operation that sold slatted steel coiling doors and related products for commercial users. Consequently, the company recorded a pre-tax charge of \$10,200,000 in connection with the divestiture. The charge included inventory write-downs of \$3,200,000, other asset write-downs aggregating \$4,200,000 and accruals for severance and facility costs of \$2,800,000.

The accompanying consolidated statement of income for 2002 includes net sales of \$28,500,000 and an operating loss of \$4,400,000 from the divested unit.

**NOTE 2—NOTES PAYABLE AND LONG-TERM DEBT:**

At September 30, 2004 and 2003, the company had short-term notes payable of \$6,218,000 and \$5,832,000, respectively, principally in connection with its European operations. The interest rate of outstanding short-term debt was 3.5% at September 30, 2004 and 3.9% at September 30, 2003.

Long-term debt at September 30 consisted of the following:

	<u>2004</u>	<u>2003</u>
4% convertible subordinated notes	\$130,000,000	\$130,000,000
Notes payable to banks—revolving credits	8,706,000	4,666,000
Notes payable to banks—term loan	8,706,000	10,498,000
Real estate mortgages	11,948,000	12,896,000
ESOP loan	3,000,000	3,500,000
Other	357,000	252,000
	<u>162,717,000</u>	<u>161,812,000</u>
Less: current portion	<u>(8,272,000)</u>	<u>(6,329,000)</u>
	<u>\$154,445,000</u>	<u>\$155,483,000</u>

The company has outstanding \$130,000,000 of 4% convertible subordinated notes due 2023 (the “Notes”). Holders may convert the Notes at a conversion price of \$24.13 per share, subject to adjustment, which is equal to a conversion rate of approximately 41.4422 shares per \$1,000 principal amount of Notes. The Notes are convertible (1) when the market price of the company’s Common Stock is more than 150%, as amended, of the conversion price, (2) if the company has called the notes for redemption, (3) if during a 5 day trading period the trading price of the Notes falls below certain thresholds or (4) upon the occurrence of specified corporate transactions. Upon conversion, the company had the option of delivering cash or a combination of cash and shares of Common Stock in exchange for tendered Notes. The company has irrevocably elected to pay Noteholders at least \$1,000 in cash for each \$1,000 principal amount of Notes presented for conversion. The excess of the value of the company’s Common Stock that would have been issuable upon conversion over the cash delivered will be paid to Noteholders in shares of the company’s Common Stock.

The company may redeem the Notes on or after July 26, 2010, for cash, at their principal amount plus accrued interest. Holders of the Notes may require the company to repurchase all or a portion of their Notes on July 18, 2010, 2013 and 2018, and upon a change in control.

Approximately \$50,000,000 of the net proceeds from the sale of the Notes was used to repurchase 3,067,484 shares of Common Stock concurrently with the sale of the Notes. Approximately \$49,000,000 of the net proceeds was used to repay revolving credit debt with the remainder available for general corporate purposes.

The company and a subsidiary have a credit agreement with several banks. This agreement, as amended, provides revolving credit through October 2005, after which the credit facility may be converted, at the option of the company, into a reducing revolving credit for two years.

Borrowings under the agreement bear interest based upon the prime rate or LIBOR and are collateralized by the capital stock of a subsidiary. In July 2003, all outstanding amounts under this agreement were paid with the proceeds of the Notes described above, and the company reduced the maximum amount available under the agreement from \$160,000,000 to \$100,000,000.

The company’s European operations have bank agreements that provide for revolving credit up to \$25,000,000 (\$8,706,000 outstanding at September 30, 2004) and a term loan with a balance of \$8,706,000 at September 30, 2004. At September 30, 2004 and 2003, amounts outstanding under the revolving credit

bore interest at 2.8% and 2.9%, respectively, and at 3.5% and 3.8%, respectively, under the term loan agreement.

Real estate mortgages bear interest at rates ranging from 5% to 8.9% with maturities extending through 2007 and are collateralized by real property whose carrying value at September 30, 2004 aggregated approximately \$17,800,000.

The company's ESOP (see Note 4) has a loan agreement the proceeds of which were used to purchase equity securities of the company. Outstanding borrowings of the ESOP have maturities extending through 2007, bear interest at rates (4.25% at September 30, 2004 and 2.4% at September 30, 2003) based upon the prime rate or LIBOR and are guaranteed by the company.

The following are the maturities of long-term debt outstanding at September 30, 2004:

2005	\$ 8,272,000
2006	9,373,000
2007	13,572,000
2008	1,500,000
2009	—
Later Years	130,000,000

**NOTE 3—SHAREHOLDERS' EQUITY:**

The company has stock option plans under which options for an aggregate of 6,950,000 shares of Common Stock may be granted. As of September 30, 2004 options for 452,325 shares remain available for future grants. The plans provide for the granting of options at an exercise price of not less than 100% of the fair market value per share at date of grant. Options generally expire ten years after date of grant and become exercisable in equal installments over two years. Transactions under the plans are as follows:

	NUMBER OF SHARES UNDER OPTION	WEIGHTED AVERAGE EXERCISE PRICE
Outstanding at September 30, 2001	7,239,375	\$ 9.28
Granted	709,200	\$ 13.85
Exercised	(1,307,025)	\$ 7.60
Terminated	(14,075)	\$ 4.89
Outstanding at September 30, 2002	6,627,475	\$ 10.11
Granted	578,050	\$ 13.46
Exercised	(281,225)	\$ 7.09
Terminated	(39,900)	\$ 14.15
Outstanding at September 30, 2003	6,884,400	\$ 10.50
Granted	256,000	\$ 18.69
Exercised	(1,375,772)	\$ 8.41
Terminated	(23,825)	\$ 16.99
Outstanding at September 30, 2004	<u>5,740,803</u>	\$ 11.48

At September 30, 2004 option groups outstanding and exercisable are as follows:

Range of Exercise Prices	Outstanding Options		
	Number of Options	Weighted Average Remaining Life	Weighted Average Exercise Price
\$15.29 to \$22.20	488,250	8.5 years	\$ 18.64
\$9.89 to \$14.32	3,550,703	4.3	\$ 12.19
\$5.46 to \$9.09	1,701,850	4.0	\$ 7.95

  

Range of Exercise Prices	Exercisable Options		
	Number of Options	Weighted Average Remaining Life	Weighted Average Exercise Price
\$15.29 to \$17.72	241,250		\$ 15.30
\$9.89 to \$14.32	3,274,388		\$ 12.08
\$5.46 to \$9.09	1,701,850		\$ 7.95

Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation", permits an entity to account for employee stock-based compensation under APB Opinion No. 25, "Accounting for Stock Issued to Employees", or adopt a fair value based method of accounting for such compensation. The company has elected to account for stock-based compensation under Opinion No. 25. Accordingly, no compensation expense has been recognized in connection with options granted. Had compensation expense for options granted been determined based on the fair value at the date of grant in accordance with Statement No. 123, the company's net income and earnings per share would have been as follows:

	2004	2003	2002
Net income, as reported	\$53,859,000	\$43,022,000	\$ 9,936,000
Stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	(1,984,000)	(2,581,000)	(2,623,000)
Pro forma net income	<u>\$51,875,000</u>	<u>\$40,441,000</u>	<u>\$ 7,313,000</u>
Earnings per share			
As reported—			
Basic	\$ 1.81	\$ 1.33	\$ .30
Diluted	1.71	1.28	.28
Pro forma—			
Basic	\$ 1.74	\$ 1.25	\$ .22
Diluted	1.62	1.19	.21

The fair value of options granted is estimated on the date of grant using the Black-Scholes option pricing model. The weighted average fair values of options granted in fiscal 2004, 2003 and 2002 were \$10.35, \$6.51 and \$6.46, respectively, based upon the following weighted average assumptions: expected volatility (.380 in 2004, .388 in 2003 and .336 in 2002), risk-free interest rate (3.99% in 2004, 4.23% in 2003 and 4.59% in 2002), expected life (7 years in 2004, 2003 and 2002), and expected dividend yield (0% in 2004, 2003 and 2002).

The company has an Outside Director Stock Award Plan (the "Outside Director Plan"), which was approved by the shareholders in 1994, under which 330,000 shares may be issued to non-employee directors. Annually, each eligible director is awarded shares of the company's Common Stock having a value of \$10,000 which vests over a three-year period.

For shares issued under the Outside Director Plan, the fair market value of the shares at the date of issuance is amortized to compensation expense over the vesting period. The related deferred compensation has been reflected as a reduction of shareholders' equity. In 2004, 2003 and 2002, 4,650, 7,300 and 6,730 shares, respectively, were issued under the Outside Director Plan.

As of September 30, 2004, a total of approximately 6,411,000 shares of the company's authorized Common Stock were reserved for issuance in connection with stock compensation plans.

The company has a shareholder rights plan which provides for one right to be attached to each share of Common Stock. The rights are currently not exercisable or transferable apart from the Common Stock, and have no voting power. Under certain circumstances, each right entitles the holder to purchase, for \$34, 11 ten-thousandths of a share of a new series of participating preferred stock, which is substantially equivalent to one share of Common Stock. These rights would become exercisable if a person or group acquires 10% or more of the company's Common Stock or announces a tender offer which would increase the person's or group's beneficial ownership to 10% or more of the company's Common Stock, subject to certain exceptions. After a person or group acquires 10% or more of the company's Common Stock, each right (other than those held by the acquiring party) will entitle the holder to purchase Common Stock having a market price of two times the exercise price. If the company is acquired in a merger or other business combination, each exercisable right entitles the holder to purchase Common Stock of the acquiring company or an affiliate having a market price of two times the exercise price of the right. In certain events the Board of Directors may exchange each right (other than those held by an acquiring party) for one share of the company's Common Stock or 11 ten-thousandths of a share of a new series of participating preferred stock. The rights expire on May 9, 2006 and can be redeemed at \$.01 per right at any time prior to becoming exercisable.

A wholly-owned subsidiary of the company has a lease agreement that limits dividends and advances it may pay to the parent company. The agreement permits the payment of income taxes based on a tax sharing arrangement, and dividends based on a percentage of the subsidiary's net income. At September 30, 2004 the subsidiary had net assets of approximately \$330,000,000.

**NOTE 4—PENSION PLANS:**

The company has pension plans that cover substantially all employees, most of which are defined contribution plans. Company contributions to the defined contribution plans are generally based upon various percentages of compensation, and aggregated \$7,100,000 in 2004, \$7,300,000 in 2003 and \$7,400,000 in 2002. The company also has defined benefit pension plans covering certain employees.

Plan assets and benefit obligations of the defined benefit plans are as follows:

	<u>September 30</u>	
	<u>2004</u>	<u>2003</u>
Change in benefit obligation—		
Projected benefit obligation, beginning of year	\$ 34,278,000	\$ 27,367,000
Service cost	1,427,000	1,042,000
Interest cost	2,305,000	2,066,000
Actuarial loss	4,635,000	4,287,000
Benefit payments	(478,000)	(484,000)
Projected benefit obligation, end of year	<u>42,167,000</u>	<u>34,278,000</u>
Change in plan assets—		
Fair value of plan assets, beginning of year	11,930,000	10,460,000
Actual return on plan assets	1,398,000	1,785,000
Contributions	2,369,000	169,000
Benefits paid	(478,000)	(484,000)
Fair value of plan assets, end of year	<u>15,219,000</u>	<u>11,930,000</u>
Reconciliation of funded status—		
Projected benefit obligation in excess of plan assets	(26,948,000)	(22,348,000)
Unrecognized net loss	14,763,000	11,378,000
Unrecognized prior service cost	68,000	77,000
Unrecognized net transition asset	2,347,000	2,659,000
Net amount recognized	<u>\$ (9,770,000)</u>	<u>\$ (8,234,000)</u>
Balance sheet amounts—		
Accumulated other comprehensive income	\$ 14,022,000	\$ 10,941,000
Intangible asset	2,419,000	2,741,000
Accrued pension liabilities	(26,211,000)	(21,916,000)
Net amount recognized	<u>\$ (9,770,000)</u>	<u>\$ (8,234,000)</u>
Accumulated benefit obligation	<u>\$ 41,430,000</u>	<u>\$ 33,846,000</u>

Net periodic pension cost for the defined benefit plans was as follows:

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Service cost	\$ 1,427,000	\$1,042,000	\$ 952,000
Interest cost	2,305,000	2,066,000	1,801,000
Expected return on plan assets	(1,054,000)	(873,000)	(1,301,000)
Amortization of net actuarial loss	907,000	538,000	190,000
Amortization of prior service cost	9,000	11,000	8,000
Amortization of transition obligation	312,000	312,000	312,000
	<u>\$ 3,906,000</u>	<u>\$3,096,000</u>	<u>\$ 1,962,000</u>

The following actuarial assumptions were used for the company's defined benefit pension plans:

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Discount rate	6.25%	6.50%	7.25%–8.00%
Expected return on plan assets	8.50%	8.50%	9.20%
Compensation rate increase	3.00%–5.50%	3.00%–5.50%	3.00%–5.50%

Expected benefit payments under the defined benefit plans at September 30, 2004 are \$473,000 in 2005, \$486,000 in 2006, \$550,000 in 2007, \$1,975,000 in 2008, \$2,401,000 in 2009 and \$19,485,000 in the years 2010 to 2014.

At September 30, 2004 and 2003, the asset allocation percentage of the defined benefit plans was as follows:

<u>Asset Category</u>	<u>Target</u>	<u>Percentage of</u>	
	<u>Allocation</u>	<u>Plan Assets</u>	
	<u>2004</u>	<u>2004</u>	<u>2003</u>
Equity securities	65%	66%	70%
Debt securities	28%	29%	25%
Other	7%	5%	5%
Totals	<u>100%</u>	<u>100%</u>	<u>100%</u>

The company's investment strategy for defined benefit plan assets is designed to achieve long-term investment objectives and minimize related investment risk. The investment strategy is reviewed annually. Equity securities consist principally of domestic stocks and debt securities consist of investment grade bonds. The expected rate of return on plan assets is based on the defined benefit plans' asset allocations, investment strategy and consultation with third-party investment managers. In 2004 the discount rate was lowered to reflect current market conditions.

The company has an Employee Stock Ownership Plan ("ESOP") that covers substantially all employees. Shares of the ESOP which have been allocated to employee accounts are charged to expense based on the fair value of the shares transferred and are treated as outstanding in earnings per share calculations. Compensation expense under the ESOP was \$832,000 in 2004, \$637,000 in 2003 and \$718,000 in 2002. The cost of shares held by the ESOP and not yet allocated to employees is reported as a reduction of shareholders' equity.

#### **NOTE 5—COMMITMENTS AND CONTINGENCIES:**

The company and its subsidiaries rent real property and equipment under operating leases expiring at various dates. Most of the real property leases have escalation clauses related to increases in real property taxes.

Future minimum payments under noncancellable operating leases consisted of the following at September 30, 2004:

2005	\$29,064,000
2006	18,931,000
2007	14,689,000
2008	8,820,000
2009	3,583,000
Later years	3,541,000

Rent expense for all operating leases totaled approximately \$31,400,000, \$30,900,000, and \$30,500,000 in 2004, 2003 and 2002, respectively.

The company is subject to various laws and regulations relating to the protection of the environment and is a party to legal proceedings arising in the ordinary course of business. Under a Consent Order entered into with the New York State Department of Environmental Conservation, a subsidiary of the company has performed remedial investigations at a site in Peekskill, New York which was sold in 1982. Based on facts presently known to it, the company believes that the resolution of such matters will not have a material adverse effect on its consolidated financial position, results of operations and cash flows.

**NOTE 6—QUARTERLY FINANCIAL INFORMATION (UNAUDITED):**

Quarterly results of operations for the years ended September 30, 2004 and 2003 are as follows:

	QUARTERS ENDED			
	SEPTEMBER 30 2004	JUNE 30 2004	MARCH 31 2004	DECEMBER 31 2003
Net sales	\$369,723,000	\$367,948,000	\$317,636,000	\$338,502,000
Gross profit	112,723,000	98,789,000	92,029,000	97,620,000
Net income	18,925,000	13,157,000	8,662,000	13,115,000
Earnings per share of common stock(1):				
Basic	\$ .64	\$ .44	\$ .29	\$ .44
Diluted	\$ .61	\$ .42	\$ .27	\$ .41

	QUARTERS ENDED			
	SEPTEMBER 30 2003	JUNE 30 2003	MARCH 31 2003	DECEMBER 31 2002
Net sales	\$362,619,000	\$312,547,000	\$277,330,000	\$302,154,000
Gross profit	105,099,000	87,452,000	75,844,000	86,998,000
Net income	16,163,000	11,322,000	4,617,000	10,920,000
Earnings per share of common stock(1):				
Basic	\$ .53	\$ .34	\$ .14	\$ .33
Diluted	\$ .50	\$ .33	\$ .14	\$ .32

- (1) Earnings per share are computed independently for each of the quarters presented on the basis described in Note 1. The sum of the quarters may not be equal to the full year earnings per share amounts.

**NOTE 7—BUSINESS SEGMENTS:**

The company's reportable business segments are as follows—Garage Doors (manufacture and sale of residential and commercial/industrial garage doors, and related products); Installation Services (sale and installation of building products, primarily for new construction, such as garage doors, garage door openers, manufactured fireplaces and surrounds, cabinets and flooring); Electronic Information and Communication Systems (communication and information systems for government and commercial markets); and Specialty Plastic Films (manufacture and sale of plastic films and film laminates for baby diapers, adult incontinence care products, disposable surgical and patient care products and plastic packaging). The company's reportable segments are distinguished from each other by types of products and services offered, classes of customers, production and distribution methods, and separate management.

The company evaluates performance and allocates resources based on operating results before interest income or expense, income taxes and certain nonrecurring items of income or expense. The accounting policies of the reportable segments are the same as those described in the summary of significant accounting policies, including the use of the percentage of completion method of accounting by the Electronic Information and Communication Systems segment (see Note 1). Intersegment sales are based on prices negotiated between the segments, and intersegment sales and profits are not eliminated in evaluating performance of a segment.

Information on the company's business segments is as follows:

	Garage Doors	Installation Services	Electronic Information and Communication Systems	Specialty Plastic Films	Totals
Revenues from external customers—					
2004	\$454,938,000	\$306,851,000	\$ 220,674,000	\$411,346,000	\$1,393,809,000
2003	404,723,000	289,324,000	178,693,000	381,910,000	1,254,650,000
2002	418,979,000	278,610,000	195,430,000	299,585,000	1,192,604,000
Intersegment revenues—					
2004	\$ 21,643,000	\$ 141,000	\$ —	\$ —	\$ 21,784,000
2003	23,714,000	85,000	—	—	23,799,000
2002	25,464,000	221,000	—	—	25,685,000
Segment profit—					
2004	\$ 42,600,000	\$ 10,909,000	\$ 20,224,000	\$ 52,655,000	\$ 126,388,000
2003	33,755,000	7,380,000	14,161,000	44,244,000	99,540,000
2002	25,414,000	7,736,000	15,156,000	40,278,000	88,584,000
Segment assets—					
2004	\$180,766,000	\$ 64,709,000	\$ 158,029,000	\$228,510,000	\$ 632,014,000
2003	151,373,000	65,332,000	159,158,000	197,633,000	573,496,000
2002	149,844,000	67,066,000	159,516,000	145,458,000	521,884,000
Segment capital expenditures—					
2004	\$ 7,148,000	\$ 1,253,000	\$ 5,085,000	\$ 41,304,000	\$ 54,790,000
2003	7,303,000	1,351,000	4,325,000	30,002,000	42,981,000
2002	4,553,000	1,236,000	4,736,000	12,650,000	23,175,000
Depreciation and amortization expense—					
2004	\$ 7,069,000	\$ 1,496,000	\$ 4,318,000	\$ 13,459,000	\$ 26,342,000
2003	7,250,000	1,304,000	3,778,000	12,170,000	24,502,000
2002	6,652,000	1,085,000	3,721,000	10,641,000	22,099,000

Goodwill at September 30, 2004 includes \$12,900,000 attributable to the garage doors segment, \$14,300,000 in the electronic information and communication systems segment and \$23,400,000 in the specialty plastic films segment.

Following are reconciliations of segment profit, assets, capital expenditures and depreciation and amortization expense to amounts reported in the consolidated financial statements:

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Profit—			
Profit for all segments	\$126,388,000	\$ 99,540,000	\$ 88,584,000
Unallocated amounts	(14,643,000)	(12,290,000)	(10,278,000)
Loss on divestiture (Note 1)	—	—	(10,200,000)
Interest expense, net	(6,996,000)	(4,185,000)	(3,703,000)
Income before income taxes	<u>\$104,749,000</u>	<u>\$ 83,065,000</u>	<u>\$ 64,403,000</u>
Assets—			
Total for all segments	\$632,014,000	\$573,496,000	\$521,884,000
Unallocated amounts	121,156,000	107,273,000	68,518,000
Intersegment eliminations	(3,654,000)	(2,039,000)	(2,708,000)
Total consolidated assets	<u>\$749,516,000</u>	<u>\$678,730,000</u>	<u>\$587,694,000</u>
Capital expenditures—			
Total for all segments	\$ 54,790,000	\$ 42,981,000	\$ 23,175,000
Unallocated amounts	1,334,000	1,068,000	1,125,000
Total consolidated capital expenditures	<u>\$ 56,124,000</u>	<u>\$ 44,049,000</u>	<u>\$ 24,300,000</u>
Depreciation and amortization expense—			
Total for all segments	\$ 26,342,000	\$ 24,502,000	\$ 22,099,000
Unallocated amounts	1,989,000	1,680,000	538,000
Total consolidated depreciation and amortization	<u>\$ 28,331,000</u>	<u>\$ 26,182,000</u>	<u>\$ 22,637,000</u>

Revenues, based on the customers' locations, and property, plant and equipment attributed to the United States and all other countries are as follows:

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Revenues by geographic area—			
United States	\$1,045,943,000	\$ 950,686,000	\$ 936,704,000
Germany	73,341,000	57,345,000	41,366,000
United Kingdom	40,370,000	37,899,000	35,650,000
Canada	40,543,000	27,167,000	23,405,000
Poland	35,823,000	35,907,000	31,176,000
All other countries	157,789,000	145,646,000	124,303,000
Consolidated net sales	<u>\$1,393,809,000</u>	<u>\$1,254,650,000</u>	<u>\$1,192,604,000</u>
Property, plant and equipment by geographic area—			
United States	\$ 113,631,000	\$ 112,517,000	\$ 107,248,000
Germany	86,815,000	55,964,000	39,929,000
All other countries	3,093,000	1,371,000	1,076,000
Consolidated property, plant and equipment	<u>\$ 203,539,000</u>	<u>\$ 169,852,000</u>	<u>\$ 148,253,000</u>

Sales to a customer of the specialty plastic films segment were approximately \$302,000,000 in 2004, \$285,000,000 in 2003 and \$214,000,000 in 2002. Sales to the United States Government and its agencies, either as a prime contractor or subcontractor, aggregated approximately \$132,000,000 in 2004, \$103,000,000 in 2003 and \$102,000,000 in 2002, all of which are included in the electronic information and communication systems segment. Unallocated amounts include general corporate expenses and assets, which consist mainly of cash, investments, and other assets not attributable to any reportable segment.

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

Not applicable.

**Item 9A. Controls and Procedures**

**Evaluation and Disclosure Controls and Procedures**

The company's management, with the participation of our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of the design and operation of the company's disclosure controls and procedures, as required by Exchange Act Rule 13a-15. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this report, the company's disclosure controls and procedures were effective to ensure that information required to be disclosed by the company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified by the SEC's rules and forms.

**Changes in Internal Controls**

There were no changes in the company's internal control over financial reporting identified in connection with the evaluation referred to above that occurred during the fourth quarter of the fiscal year ended September 30, 2004 that have materially affected, or are reasonably likely to materially affect, the registrant's internal control over financial reporting.

**Limitations on the Effectiveness Controls**

The company believes that a control system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the control system are met, and no evaluation of controls can provide absolute assurance that all controls issues and instances of fraud, if any, within a company have been detected. The company's disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives and the company's chief executive officer and chief financial officer have concluded that such controls and procedures are effective at the "reasonable assurance" level.

**Item 9B. Other Information**

None

### **PART III**

The information required by Part III (Items 10, 11, 12, 13 and 14) is incorporated by reference to the company's definitive proxy statement in connection with its Annual Meeting of Stockholders scheduled to be held in February, 2005, to be filed with the Securities and Exchange Commission within 120 days following the end of the company's fiscal year ended September 30, 2004. Information relating to the executive officers of the Registrant appears under Item 1 of this report.

## PART IV

### Item 15. Exhibits and Financial Statement Schedules

The following consolidated financial statements of Griffon Corporation and subsidiaries are included in Item 8:

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(a) 1. <i>Financial Statements</i>	
<a href="#">Consolidated Balance Sheets at September 30, 2004 and 2003</a>	25
<a href="#">Consolidated Statements of Income for the Years Ended September 30, 2004, 2003 and 2002</a>	26
<a href="#">Consolidated Statements of Cash Flows for the Years Ended September 30, 2004, 2003 and 2002</a>	27
<a href="#">Consolidated Statements of Shareholders' Equity for the Years Ended September 30, 2004, 2003 and 2002</a>	28
<a href="#">Notes to Consolidated Financial Statements</a>	29
2. <i>Schedules</i>	
I <a href="#">Condensed Financial Information of Registrant</a>	S-1
II <a href="#">Valuation and Qualifying Accounts</a>	S-2

Schedules other than those listed are omitted because they are not applicable or because the information required is included in the consolidated financial statements.

### 3. *Exhibits*

<u>Exhibit No.</u>	
3.1	Restated Certificate of Incorporation (Exhibit 3.1 of Annual Report on Form 10-K for the year ended September 30, 1995)
3.2	Amended and restated By-laws (Exhibit 3 of Current Report on Form 8-K dated May 2, 2001)
4.1	Rights Agreement dated as of May 9, 1996 between the Registrant and American Stock Transfer Company (Exhibit 1.1 of Current Report on Form 8-K dated May 9, 1996)
4.2	Loan Agreement dated as of October 25, 2001 between the Registrant and lending institutions. (Exhibit 4.2 to Annual Report on Form 10-K for the year ended September 30, 2001).
4.3*	Indenture, dated as of June 22, 2004, between the Registrant and American Stock Transfer and Trust Company, including the form of note.
4.4*	Irrevocable Election Letter related to Indenture dated as of June 22, 2004 between the Registrant and American Stock Transfer and Trust Company.
10.1	Employment Agreement dated as of July 1, 2001 between the Registrant and Harvey R. Blau (Exhibit 10.1 of Current Report on Form 8-K dated May 2, 2001)
10.2	Employment Agreement dated as of July 1, 2001 between the Registrant and Robert Balemian (Exhibit 10.2 of Current Report on Form 8-K dated May 2, 2001)

- 10.3 Form of Trust Agreement between the Registrant and U.S. Trust Company of California, N.A., as Trustee, relating to the company's Employee Stock Ownership Plan (Exhibit 10.3 of Annual Report on Form 10-K for the year ended September 30, 1994)
- 10.4 1992 Non-Qualified Stock Option Plan (Exhibit 10.10 of Annual Report on Form 10-K for the year ended September 30, 1993)
- 10.5 Non-Qualified Stock Option Plan (Exhibit 10.12 of Annual Report on Form 10-K for the year ended September 30, 1998)
- 10.6 Form of Indemnification Agreement between the Registrant and its officers and directors (Exhibit 28 to Current Report on Form 8-K dated May 3, 1990)
- 10.7 Outside Director Stock Award Plan (Exhibit 4 of Form S-8 Registration Statement No. 33-52319)
- 10.8 1995 Stock Option Plan (Exhibit 4 of Form S-8 Registration Statement No. 33-57683)
- 10.9 1997 Stock Option Plan (Exhibit 4.2 of Form S-8 Registration Statement No. 333-21503)
- 10.10 2001 Stock Option Plan (Exhibit 4.1 of Form S-8 Registration Statement No. 333-67760)
- 10.11 Senior Management Incentive Compensation Plan (Exhibit 4.2 of Form S-8 Registration Statement No. 333-62319)
- 10.12 1998 Employee and Director Stock Option Plan, as amended (Exhibit 4.1 of Form S-8 Registration Statement No. 333-102742)
- 10.13 1998 Stock Option Plan (Exhibit 4.1 of Form S-8 Registration Statement No. 333-62319)
- 10.14 Amendment to Employment Agreement between the Registrant and Harvey R. Blau dated August 8, 2003 (Exhibit 10.1 of Quarterly Report on Form 10-Q for the quarter ended June 30, 2003)
- 10.15 Amendment to Employment Agreement between the Registrant and Robert Balemian dated August 8, 2003 (Exhibit 10.2 of Quarterly Report on Form 10-Q for the quarter ended June 30, 2003)
- 14 Code of Ethics for Senior Financial Officers (Exhibit 14 to Annual Report on Form 10-K for the year ended September 30, 2003)
- 21 The following lists the company's significant subsidiaries all of which are wholly-owned by the company. The names of certain subsidiaries which do not, when considered in the aggregate, constitute a significant subsidiary, have been omitted.

<u>Name of Subsidiary</u>	<u>State of Incorporation</u>
Clopay Corporation	Delaware
Telephonics Corporation	Delaware

- 23\* Consent of PricewaterhouseCoopers LLP
- 31.1\* Certification of Chief Executive Officer pursuant to Section 302 of Sarbanes-Oxley Act
- 31.2\* Certification of Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley Act
- 32\* Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 18 USC Section 1350.

\* Filed herewith. All other exhibits are incorporated herein by reference to the exhibit indicated in the parenthetical references.

The following undertakings are incorporated into the company's Registration Statements on Form S-8 (Registration Nos. 33-39090, 33-62966, 33-52319, 33-57683, 333-21503, 333-62319, 333-84409, 333-67760, 333-88422 and 333-102742).

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in

connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the company has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on the 13<sup>th</sup> day of December 2004.

GRIFFON CORPORATION

By: /s/ HARVEY R. BLAU  
Harvey R. Blau,  
*Chairman of the Board and Chief Executive Officer*

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below on December 13, 2004 by the following persons in the capacities indicated:

<u>/s/ HARVEY R. BLAU</u> Harvey R. Blau	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)
<u>/s/ ROBERT BALEMIAN</u> Robert Balemian	President and Director (Chief Operating Officer, Chief Financial Officer and Principal Financial Officer)
<u>/s/ PATRICK L. ALESIA</u> Patrick L. Alesia	Vice President and Treasurer
<u>/s/ HENRY A. ALPERT</u> Henry A. Alpert	Director
<u>/s/ BERTRAND M. BELL</u> Bertrand M. Bell	Director
<u>/s/ ABRAHAM M. BUCHMAN</u> Abraham M. Buchman	Director
<u>/s/ ROBERT HARRISON</u> Robert Harrison	Director
<u>/s/ CLARENCE A. HILL, JR.</u> Clarence A. Hill, Jr.	Director
<u>/s/ RONALD J. KRAMER</u> Ronald J. Kramer	Director
<u>/s/ JAMES W. STANSBERRY</u> James W. Stansberry	Director
<u>/s/ MARTIN S. SUSSMAN</u> Martin S. Sussman	Director
<u>/s/ WILLIAM H. WALDORF</u> William H. Waldorf	Director
<u>/s/ JOSEPH J. WHALEN</u> Joseph J. Whalen	Director
<u>/s/ LESTER L. WOLFF</u> Lester L. Wolff	Director

**GRIFFON CORPORATION**  
**SCHEDULE I—CONDENSED FINANCIAL INFORMATION OF REGISTRANT**  
**BALANCE SHEETS—SEPTEMBER 30, 2004 AND 2003**

	<u>September 30,</u>	
	<u>2004</u>	<u>2003</u>
<b>ASSETS</b>		
Current Assets:		
Cash and cash equivalents	\$ 32,162,000	\$ 35,117,000
Prepaid expenses and other current assets	11,301,000	11,219,000
Total current assets	<u>43,463,000</u>	<u>46,336,000</u>
Property, plant & equipment at cost, less accumulated depreciation	1,506,000	1,439,000
Investment in subsidiaries	449,466,000	399,212,000
Other assets	12,394,000	12,614,000
	<u>\$506,829,000</u>	<u>\$459,601,000</u>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current Liabilities:		
Current portion of long-term debt	\$ 500,000	\$ 500,000
Accounts payable and accrued liabilities	25,128,000	24,880,000
Income taxes	639,000	1,129,000
Total current liabilities	<u>26,267,000</u>	<u>26,509,000</u>
Long-term liabilities:		
Convertible subordinated notes	130,000,000	130,000,000
Other	31,590,000	19,038,000
	<u>161,590,000</u>	<u>149,038,000</u>
Shareholders' equity	318,972,000	284,054,000
	<u>\$506,829,000</u>	<u>\$459,601,000</u>

**GRIFFON CORPORATION**  
**SCHEDULE I—CONDENSED FINANCIAL INFORMATION OF REGISTRANT (Continued)**  
**STATEMENTS OF OPERATIONS**  
**FOR THE YEARS ENDED SEPTEMBER 30,**

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Costs and Expenses:			
General and administrative expenses	\$ 14,200,000	\$ 11,640,000	\$ 10,341,000
Interest expense and other, net	5,374,000	2,325,000	1,435,000
	<u>19,574,000</u>	<u>13,965,000</u>	<u>11,776,000</u>
Loss before credit for federal income taxes and equity in net income of subsidiaries	(19,574,000)	(13,965,000)	(11,776,000)
Credit for federal income taxes resulting from tax sharing arrangement with subsidiaries	(7,599,000)	(8,451,000)	(6,015,000)
Loss before equity in net income of subsidiaries	(11,975,000)	(5,514,000)	(5,761,000)
Equity in net income of subsidiaries before the cumulative effect of a change in accounting principle	65,834,000	48,536,000	39,815,000
Income before cumulative effect of a change in accounting principle	53,859,000	43,022,000	34,054,000
Cumulative effect of a change in accounting principle, net of income taxes	—	—	(24,118,000)
Net income	<u>\$ 53,859,000</u>	<u>\$ 43,022,000</u>	<u>\$ 9,936,000</u>

**GRIFFON CORPORATION**  
**SCHEDULE I—CONDENSED FINANCIAL INFORMATION OF REGISTRANT (Continued)**  
**STATEMENTS OF CASH FLOWS**  
**FOR THE YEARS ENDED SEPTEMBER 30,**

	<u>2004</u>	<u>2003</u>	<u>2002</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net income	\$ 53,859,000	\$ 43,022,000	\$ 9,936,000
Adjustments to reconcile net income to net cash provided (used) by operating activities—			
Cumulative effect of a change in accounting principle	—	—	24,118,000
Deferred income taxes	8,827,000	5,795,000	(3,275,000)
Equity in net income of subsidiaries	(65,834,000)	(48,536,000)	(39,815,000)
Change in assets and liabilities—			
Increase in prepaid expenses and other assets	(417,000)	(1,262,000)	(316,000)
Increase (decrease) in accounts payable, accrued liabilities and income taxes payable	3,061,000	(2,540,000)	3,051,000
Other changes, net	4,021,000	2,456,000	5,077,000
Total adjustments	<u>(50,342,000)</u>	<u>(44,087,000)</u>	<u>(11,160,000)</u>
Net cash provided (used) by operating activities	<u>3,517,000</u>	<u>(1,065,000)</u>	<u>(1,224,000)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Acquisition of property, plant and equipment	(559,000)	(1,068,000)	—
Advances to subsidiaries	—	(18,000,000)	—
Distributions from subsidiaries	17,782,000	13,000,000	38,000,000
Net cash provided (used) by investing activities	<u>17,223,000</u>	<u>(6,068,000)</u>	<u>38,000,000</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Purchase of treasury shares	(28,400,000)	(60,655,000)	(11,874,000)
Proceeds from issuance of long-term debt	—	147,000,000	—
Payment of long-term debt	(500,000)	(46,500,000)	(29,500,000)
Exercise of stock options	5,473,000	1,288,000	6,788,000
Payment of debt issuance costs	—	(4,218,000)	—
Other, net	(268,000)	—	(504,000)
Net cash provided (used) by financing activities	<u>(23,695,000)</u>	<u>36,915,000</u>	<u>(35,090,000)</u>
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	(2,955,000)	29,782,000	1,686,000
CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR	<u>35,117,000</u>	<u>5,335,000</u>	<u>3,649,000</u>
CASH AND CASH EQUIVALENTS AT END OF YEAR	<u>\$ 32,162,000</u>	<u>\$ 35,117,000</u>	<u>\$ 5,335,000</u>

**GRIFFON CORPORATION AND SUBSIDIARIES**  
**SCHEDULE II—VALUATION AND QUALIFYING ACCOUNTS**  
**FOR THE YEARS ENDED SEPTEMBER 30, 2004, 2003 AND 2002**

<u>Description</u>	<u>Balance at Beginning of Period</u>	<u>Additions</u>		<u>Deductions</u>		<u>Balance at End of Period</u>
		<u>Charged to Profit and Loss</u>	<u>Charged to Other Accounts</u>	<u>Accounts Written Off</u>	<u>Other</u>	
<b>FOR THE YEAR ENDED SEPTEMBER 30, 2004:</b>						
Allowance for doubtful accounts:						
Bad debts	\$ 5,381,000	\$ 2,785,000	\$ 1,310,000(1)	\$ 3,140,000	\$ 63,000	\$ 6,273,000
Sales returns and allowances	2,584,000	1,718,000	137,000	1,983,000	—	2,456,000
	<u>\$ 7,965,000</u>	<u>\$ 4,503,000</u>	<u>\$ 1,447,000</u>	<u>\$ 5,123,000</u>	<u>\$ 63,000</u>	<u>\$ 8,729,000</u>
Inventory valuation	\$ 7,510,000	\$ 1,633,000	\$ 159,000	\$ 2,042,000	\$ —	\$ 7,260,000
<b>FOR THE YEAR ENDED SEPTEMBER 30, 2003:</b>						
Allowance for doubtful accounts:						
Bad debts	\$ 5,705,000	\$ 1,879,000	\$ 847,000	\$ 3,050,000	\$ —	\$ 5,381,000
Sales returns and allowances	3,029,000	1,102,000	228,000	1,775,000	—	2,584,000
	<u>\$ 8,734,000</u>	<u>\$ 2,981,000</u>	<u>\$ 1,075,000</u>	<u>\$ 4,825,000</u>	<u>\$ —</u>	<u>\$ 7,965,000</u>
Inventory valuation	\$ 7,635,000	\$ 2,623,000	\$ 242,000	\$ 2,990,000	\$ —	\$ 7,510,000
<b>FOR THE YEAR ENDED SEPTEMBER 30, 2002:</b>						
Allowance for doubtful accounts:						
Bad debts	\$ 6,851,000	\$ 1,406,000	\$ 631,000	\$ 3,128,000	\$ 55,000	\$ 5,705,000
Sales returns and allowances	3,721,000	887,000	119,000	846,000	852,000(2)	3,029,000
	<u>\$ 10,572,000</u>	<u>\$ 2,293,000</u>	<u>\$ 750,000</u>	<u>\$ 3,974,000</u>	<u>\$ 907,000</u>	<u>\$ 8,734,000</u>
Inventory valuation	\$ 7,445,000	\$ 4,157,000	\$ 64,000	\$ 4,031,000	\$ —	\$ 7,635,000

(1) Reclassifications from other balance sheet accounts and bad debt recoveries.

(2) Reclassified to other balance sheet accounts.

**GRIFFON CORPORATION**

**4.0% Contingent Convertible Subordinated Notes Due 2023  
(second series)**

**INDENTURE**

**American Stock Transfer & Trust Company, as Trustee**

**Dated as of June 22, 2004**

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CROSS-REFERENCE TABLE\*

Trust Indenture Act Section	Indenture Section
310(a)(1)	7.10
(a)(2)	N.A.
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	N.A.
(b)	7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	N.A.
(b)	12.03
(c)	12.03
313(a)	7.06
(b)	7.06
(b)	7.06
(c)	N.A.
(d)	N.A.
314(a)	4.02, 4.03
(b)	N.A.
(c)(1)	11.04
(c)(2)	11.04
(c)(3)	N.A.
(d)	N.A.
(e)	N.A.
(f)	N.A.
315(a)	7.01(b)
(b)	7.05
(c)	N.A.
(d)	7.01(c)
(e)	6.11
316(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	N.A.
(c)	N.A.
317(a)(1)	N.A.
(a)(2)	N.A.
(b)	N.A.
318(a)	N.A.

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N.A. means not applicable.

\* This Cross-Reference Table is not part of the Indenture.

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[Section 12.12. Multiple Originals](#)

<a href="#">Exhibit A-1</a>	—	<a href="#">Form of Global Security</a>
<a href="#">Exhibit A-2</a>	—	<a href="#">Form of Certificated Security</a>
<a href="#">Exhibit B</a>	—	<a href="#">Transfer Certificate</a>

INDENTURE dated as of June 22, 2004 between Griffon Corporation, a Delaware corporation (the “Company”), and American Stock Transfer & Trust Company, a trust company organized under the laws of the State of New York (the “Trustee”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders (as defined below) of the Company’s 4.0% Contingent Convertible Subordinated Notes Due 2023 (second series) (the “Securities”):

## ARTICLE 1

### DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. Definitions.

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

“Affiliate” has the meaning provided in Rule 405 under the Securities Act.

“Bankruptcy Law” means Title 11, U.S. Code or any similar federal, state, or foreign law for the relief of debtors.

“Beneficial Owner” shall be determined in accordance with Rule 13d-3 and Rule 13d-5 promulgated by the SEC under the Exchange Act or any successor provision, except that, for purposes of the definition of Change in Control, a Person shall be deemed to have “Beneficial Ownership” of all shares of Common Stock that the Person has the right to acquire, whether exercisable immediately or only after the passage of time.

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

“Board Resolution” means a copy of one or more resolutions, certified by an Officer of the Company to have been duly adopted or consented to by the applicable Board of Directors and to be in full force and effect, and delivered to the Trustee.

“Business Day” means a day that in the City of New York is not a day on which banking institutions are authorized or obligated by law or regulation to close.

“Capitalized Lease Obligations” means, as to any Person, the obligations of such Person under a lease that is required to be classified and accounted for as capital lease obligations under GAAP and, for purposes of this definition, the amount of such obligations at any date shall be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

“Capital Stock” for 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.

“Cash Conversion Price” means, in respect of each \$1,000 of principal amount of a Security, an amount in cash equal to the product of (i) the average of the Closing Price of the Common Stock for each Trading Day in the five Trading Day period immediately following (a) the date on which the Company delivers timely notice of its election to deliver cash instead of issuing shares of Common Stock in accordance with Section 10.02, if the Company has not given notice of redemption with respect to such Security or (b) the Conversion Date, if the Company has given notice of redemption with respect to such Security, in either case multiplied by (ii) the number of shares of Common Stock issuable upon conversion of such Security on such date and appropriately adjusted to take into account the occurrence, during such five Trading Day period, of any event requiring adjustment of the Conversion Price under this Indenture.

“Cash Equivalents” means (i) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor’s, a division of the McGraw-Hill Companies, Inc. (“S&P”) or Moody’s Investors Service, Inc. (“Moody’s”); (iii) commercial paper maturing no more than one year from the date of acquisition thereof issued by any bank organized under the laws of the United States of America or any state thereof or the District of Columbia or any U.S. branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than \$250,000,000; (iv) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (iii) above; and (v) money market funds which invest substantially all their assets in securities of the types described in clauses (i) through (iv) above.

“Certificated Securities” means Securities that are in the form of the Securities attached hereto as Exhibit A-2.

“Change in Control” shall be deemed to have occurred at such time after the original issuance of the Securities as:

(a) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company, to any Person (including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Exchange Act);

(b) the approval by the holders of the Capital Stock of the Company of any plan or proposal for the liquidation or dissolution of the Company, whether or not otherwise in compliance with this Indenture;

(c) any Person (including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Exchange Act), other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or any such Subsidiary, is or becomes the Beneficial Owner, directly or indirectly, through a purchase or other acquisition transaction or series of transactions (other than a merger or consolidation involving the Company), of shares of Capital Stock of the Company entitling such Person to exercise in excess of 30% of the aggregate ordinary voting power of all shares of Voting Stock of the Company; or

(d) the first day on which a majority of the members of the Board of Directors of the Company are not Continuing Directors.

“Closing Price” with respect to any security on any day means the closing sale price per security regular way on such day or, in case no such sale is reported for such day, the average of the reported closing bid and asked prices, regular way, in each case on the New York Stock Exchange, or, if such security is not listed or admitted to trading on such Exchange, on the principal national security exchange or quotation system on which such security is quoted or listed or admitted to trading, or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the average of the closing bid and asked prices of such security on the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated, or a similar generally accepted reporting service, or if not so available, the price furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose, or a price determined in good faith by the Board of Directors or, to the extent permitted by applicable law, a duly authorized committee thereof, whose determination shall be conclusive.

“Common Stock” shall mean shares of the Company’s Common Stock, \$.25 par value per share, as they exist on the date of this Indenture or any other shares of Capital Stock of the Company into which the Common Stock shall be reclassified or changed.

“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 successor or successors.

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

“Contingent Interest” shall mean an amount of interest payable at a rate equal to 0.50% per annum using a principal amount equal to the average of the Security Trading Price for the five Trading Days ending on the third Trading Day immediately preceding the first day for the applicable Contingent Interest Period (the “Contingent Interest Average Trading Price”) per \$1,000 of Securities in respect of any Contingent Interest Period, if the Contingent Interest Average Trading Price equals \$1,200 or more.

“Contingent Interest Period” shall mean any six-month interest period from July 18 to, but excluding, January 18, and from January 18 to, but excluding, July 18, with the initial six-month period commencing on July 18, 2010.

“Continuing Directors” means, as of any date of determination, any member of the Board of Directors who (a) was a member of the Board of Directors as of the date hereof or (b) was nominated for election or elected to the Board of Directors with approval of a majority of the Continuing Directors who were members at the time of the new director’s nomination or election.

“Corporate Trust Office” means the office of the Trustee at which at any time the trust created by this Indenture shall be administered, which office at the date hereof is located at 59 Maiden Lane, New York, New York 10038, Attention: Corporate Trust Department, 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).

“Credit Agreement” means the Loan Agreement, dated as of October 25, 2001, among the Company, Telephonics Corporation, the lenders party thereto and Fleet National Bank, as Administrative Agent and The Chase Manhattan Bank, as Documentation Agent, together with the related documents thereto (including, without limitation, any guarantee agreements and security documents), in each case as such agreement may be amended (including any amendment and restatement thereof), supplemented or otherwise modified from time to time, including any agreement extending the maturity of, refinancing, replacing or otherwise restructuring (including increasing the amount of available borrowings thereunder or adding Subsidiaries of the Company as additional borrowers or guarantors thereunder) all or any portion of the Indebtedness under such agreement or any successor or replacement agreement and whether by the same or any other agent, lender or group of lenders.

“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 (i) Indebtedness under or in respect of the Credit Agreement and (ii) any particular Senior Indebtedness of the Company in which the instrument creating or evidencing the same or the assumption or guarantee thereof (or any related agreements or documents to which the Company is a party) expressly provides that such Senior Indebtedness shall be “Designated Senior Indebtedness” for purposes of this Indenture (provided that such instrument, agreement or other document may place limitations and conditions on the right of such Senior Indebtedness to exercise the rights of Designated Senior Indebtedness).

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

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards

Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect from time to time.

“Global Securities” means Securities that are in the form of the Securities attached hereto as Exhibit A-1, and, to the extent that such Securities are required to bear the legend required by Section 2.06, such Securities will be in the form of a 144A Global Security.

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

“Indebtedness” means, with respect to any Person, without duplication, (a) all indebtedness, obligations and other liabilities (contingent or otherwise) of such Person (i) for borrowed money (including obligations of such Person in respect of overdrafts, and any loans or advances from banks, whether or not evidenced by notes or similar instruments) or (ii) evidenced by credit or loan agreements, bonds, debentures, notes or similar instruments (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof) (other than any accounts payable or other accrued current liability or obligation incurred in the ordinary course of business in connection with the obtaining of materials or services), (b) all reimbursement obligations and other liabilities (contingent or otherwise) of such Person with respect to letters of credit, bank guarantees or bankers’ acceptances, (c) all obligations and liabilities (contingent or otherwise) of such Person (i) in respect of Capitalized Lease Obligations or (ii) under any lease or related document (including a purchase agreement, conditional sale or other title retention agreement) in connection with the lease of real property or improvements thereon (or any personal property included as part of any such lease) which provides that such Person is contractually obligated to purchase or cause a third party to purchase the leased property or pay an agreed-upon residual value of the leased property to the lessor (whether or not such lease transaction is characterized as an operating lease or a Capitalized Lease Obligation), (d) all obligations (contingent or otherwise) of such Person with respect to any interest rate or other swap, cap, floor or collar agreement, hedge agreement, forward contract, or other similar instrument or agreement or foreign currency hedge, exchange, purchase or similar instrument or agreement, (e) all direct or indirect guaranties or similar agreements by such Person in respect of, and obligations or liabilities of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kinds described in clauses (a) through (d), and (f) any and all deferrals, renewals, extensions, refinancings and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kinds described in clauses (a) through (e); provided, however, that Indebtedness shall not include obligations and liabilities of such Person (x) arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business, provided such obligations are extinguished within two Business Days of their incurrence, (y) resulting from the endorsement of negotiable instruments for collection in the ordinary course of business and consistent with past business practices or (z) stand-by letters of credit to the extent collateralized by cash or Cash Equivalents.

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

“Initial Purchasers” shall mean Deutsche Bank Securities Inc., J.P. Morgan Securities Inc., Jefferies & Company, Inc. and Legg Mason Wood Walker Incorporated.

“Issue Date” of any Security means the date on which the Security was originally issued or deemed issued as set forth on the face of the Security.

“Liquidated Damages” has the meaning set forth in the Registration Rights Agreement dated as of July 18, 2003 between the Company and the Initial Purchasers.

“Market Price” means the average of the Closing Prices per share of Common Stock for 20 consecutive Trading Days commencing 30 Trading Days before the record date with respect to any distribution, issuance or other event requiring such computation, appropriately adjusted (as determined in good faith by the Board of Directors of the Company, whose determination shall be conclusive) to take into account the occurrence, during the period commencing on the first of such 20 consecutive Trading Days and ending on such record date, of any event requiring adjustment of the Conversion Price under this Indenture.

“Non-Recourse Indebtedness” means any Indebtedness of the Company or any of its Subsidiaries that is (i) (A) specifically advanced to finance the acquisition of investment assets and (B) secured only by the assets to which such Indebtedness relates without recourse to the Company or any of its Subsidiaries, (ii) advanced to a Subsidiary of the Company or group of Subsidiaries of the Company formed for the sole purpose of acquiring or holding investment assets (A) against which a loan is obtained that is made without recourse to, and with no cross-collateralization against the assets of, the Company or any other Subsidiary of the Company, and (B) upon complete or partial liquidation of which the loan must be correspondingly completely or partially repaid, as the case may be, or (iii) specifically advanced to finance the acquisition of real property and secured by only the real property to which such Indebtedness relates without recourse to the Company or any of its Subsidiaries.

“Obligations” means all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation under which any Indebtedness is created, evidenced or secured, including in the case of the Securities, Contingent Interest and Liquidated Damages, if any.

“Officer” means the Chairman and Chief Executive Officer, the President, any Vice President (whether or not such is preceded by any modifier such as “Executive, “Senior” or the like), the Chief Financial Officer, the Treasurer, the Controller or the Secretary of such Person or any other officer designated by the board of directors of such Person serving in a similar capacity; provided, that the designation of any such Officer by the Board of Directors of the Company shall be evidenced in a Board Resolution.

“Officers’ Certificate” means a written certificate containing the 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 the principal executive officer, principal financial officer or the principal accounting officer of the Company but need not contain the information specified in Sections 12.04 and 12.05.

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

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

“Recourse Indebtedness” means all Indebtedness of the Company and its Subsidiaries other than Non-Recourse Indebtedness.

“Redemption Date” or “Redemption Dates” shall mean the date specified for redemption of the Securities in accordance with the terms of the Securities and this Indenture.

“Redemption Price” or “Redemption Prices” shall have the meaning set forth in paragraph 5 of the Securities.

“Responsible Officer” shall mean, 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 and who shall have direct responsibility for the administration of this Indenture.

“Representative” means the indenture trustee or other trustee, agent or representative in respect of any Designated Senior Indebtedness; *provided, however*, that if, and for so long as, any Designated Senior Indebtedness lacks such a representative, then the Representative for such Designated Senior Indebtedness shall at all times constitute the holders of a majority in outstanding principal amount of such Designated Senior Indebtedness in respect of any Designated Senior Indebtedness.

“Restricted Security” means a Security required to bear the restrictive legend set forth in the form of Security 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.

“Security” or “Securities” means any of the Company’s 4.0% Contingent Convertible Subordinated Notes Due 2023, as amended or supplemented from time to time, issued under this Indenture.

“Security Trading Price” per \$1,000 in principal amount of Securities on any date of determination means the average of the secondary market bid quotations per \$1,000 in principal amount of Securities obtained by the Conversion Agent for \$5,000,000 in principal amount of Securities at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers selected by the Company; provided that if at least three such bids cannot reasonably be obtained by the Conversion Agent, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Conversion Agent, such one bid shall be used. If the Conversion Agent cannot reasonably obtain at least one bid for \$5,000,000 in principal amount of Securities from a nationally recognized securities dealer or, in the reasonable judgment of the Company, the bid quotations are not indicative of the secondary market value of the Securities, then the Security Trading Price will be determined in good faith by the calculation agent (which shall initially be the Trustee unless the Trustee shall have appointed a calculation agent, which may be any investment bank with a national or international reputation with experience in such matters, including the Initial Purchasers or their successors) taking into account in such determination such factors as it, in its sole discretion after consultation with the Company, deems appropriate.

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

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

“Senior Indebtedness” means the principal of, premium, if any, interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowed as a claim in any such proceeding) and rent payable on or in connection with, and all fees, costs, expenses and other amounts accrued or due on or in connection with, Indebtedness of the Company, whether secured or unsecured, absolute or contingent, due or to become due, outstanding on the date of this Indenture or thereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to, the foregoing). Senior indebtedness does not include (i) any indebtedness or obligation whose terms expressly provide that such indebtedness or obligation shall not be senior in right of payment to the Securities or expressly provides that such indebtedness is equal or pari passu in right of payment with or junior in right of payment to the Securities; (ii) any indebtedness of the Company to any Subsidiary of the Company and (iii) the Securities.

“Significant Subsidiary” has the meaning ascribed to such term in Regulation S-X (17 CFR Part 210).

“Stated Maturity”, when used with respect to any Security, means the date specified in such Security as the fixed date on which an amount equal to the principal amount of such Security is due and payable.

“Subsidiary” means, with respect to any Person, (i) any corporation of which the outstanding Capital Stock having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances (determined without regard to any classification of directors) shall at the time be owned, directly or indirectly, by such Person, (ii) any other Person (other than a partnership) of which at least a majority of the voting interest under ordinary circumstances is at the time, directly or indirectly, owned by such Person or (iii) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

“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 (x) if the applicable security is listed or admitted for trading on the New York Stock Exchange, or another national security exchange, a day on which the New York Stock Exchange or such other national security exchange is open for business or (y) if the applicable security is quoted on the Nasdaq National Market, a day on which trades may be made thereon or (z) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

“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.

“U.S. Government Obligations” means direct obligations of, and obligations guaranteed by, the United States of America for the payment of which the full faith and credit of the United States of America is pledged.

“Voting Stock” of a Person means Capital Stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances (determined without regard to any classification of directors) to elect at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time Capital Stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

Term	<u>Defined in Section:</u>
Acceleration Notice	6.02(a)
Act	1.05(a)
Agent Members	2.12(e)(v)
Change in Control Purchase Date	3.09(a)
Change in Control Purchase Price	3.09(a)
Company Change in Control Notice	3.09(b)
Company Notice	3.08(b)
Company Notice Date	3.08(b)
Conversion Agent	2.03
Conversion Date	10.02
Conversion Price	10.06
Depository	2.01(b)
DTC	2.01(b)
Event of Default	6.01
Ex-Dividend Date	10.01
Expiration Time	10.06(d)
Legal Holiday	12.08
Legend	2.06(f)
Paying Agent	2.03
Payment Blockage Period	11.02(a)
Purchase Date	3.08(a)
Purchase Notice	3.08(a)(i)
Purchase Price	3.08(a)
Purchased Shares	10.06(d)
QIB	2.01(b)
Quarter	10.01(a)
Registrar	2.03
Rule 144A Information	4.06

Section 1.03. Incorporation by Reference of Trust Indenture Act. Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

“Indenture Securities” means the Securities.

“Indenture Security Holder” means a Securityholder.

“Indenture to be Qualified” means this Indenture.

“Indenture Trustee” or “Institutional Trustee” means the Trustee.

“Obligor” on the indenture securities means the Company.

All other TIA terms used in this Indenture that are defined by the TIA, defined by a TIA reference to another statute or defined by an 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 GAAP;
- (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 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.

(c) The ownership of Securities shall be proved by the register maintained by the Registrar.

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

(e) 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 Board Resolution, 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 the purposes of determining whether Holders of the requisite proportion of outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Securities 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 SECURITIES

Section 2.01. Form and Dating. (a) Forms. The Securities and the Trustee's certificate of authentication shall be substantially in the forms set forth on Exhibits A-1 and A-2, which are a part of this Indenture and incorporated by reference herein. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage; provided that any such notation, legend or endorsement required by usage is in a form acceptable to the Company. The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Security shall be dated the date of its authentication.

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

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

Any adjustment of the aggregate principal amount of a Global Security to reflect the amount of any increase or decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee as required by Section 2.12 hereof and shall be made on the records of the Trustee and the Depository.

(d) Book-Entry Provisions. The Company shall execute and the Trustee shall, in accordance with this Section 2.01(d), authenticate and deliver initially one or more Global Securities that (a) shall be registered in the name of the Depository, (b) shall be delivered by the Trustee to the Depository or pursuant to the Depository'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 GRIFFON CORPORATION (THE “COMPANY”) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS TO NOMINEES OF THE DEPOSITORY TRUST COMPANY OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY 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.”

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

Section 2.02. Execution and Authentication. The Securities shall be executed on behalf of the Company by the manual or facsimile signature of any Officer.

Securities bearing the manual or facsimile signatures of individuals who were at the time of the execution of the Securities 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 Securities or did not hold such offices at the date of authentication of such Securities.

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

The Trustee shall authenticate and deliver Securities for original issue in an aggregate principal amount of up to \$130,000,000 upon a Company Order without any further action by the Company. The aggregate principal amount of Securities outstanding at any time may not exceed the amount set forth in the foregoing sentence, except as provided in Section 2.07.

The Securities shall be issued only in registered form without coupons and only in denominations of \$1,000 of 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 Securities may be presented for registration of transfer or for exchange ("Registrar"), an office or agency where Securities may be presented for purchase or payment ("Paying Agent") and an office or agency where Securities may be presented for conversion ("Conversion Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may 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). Such 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 7.07. 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 Securities.

Section 2.04. Paying Agent to Hold Money in Trust. Except as otherwise provided herein, not later 11:00 a.m. (New York City time) on the Business Day prior to each due date of payments in respect of any Security, the Company shall deposit with the Paying Agent a sum of money 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 Holders or the Trustee all money held by the Paying Agent for the making of payments in respect of the Securities 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 moneys held in trust. If the Company, a Subsidiary or an Affiliate of either of them acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require the Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by it. Upon doing so, the Paying Agent shall have no further liability for such money or shares of Common Stock, as the case may be.

Section 2.05. Holder 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 Holders. If the Trustee is not the Registrar, the Company shall cause to be furnished to the Trustee at least semiannually on January 10 and July 10 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 Holders, which list may be dated not more than 15 days prior to the time such information is furnished; provided however, that the list of Holders provided on January 10 and July 10 shall contain the list of Holders as of the immediately preceding January 1 and July 1, respectively.

Section 2.06. Transfer and Exchange.

(a) Subject to Section 2.12 hereof, upon surrender for registration of transfer of any Securities, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Securityholder or such Securityholder'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 Securities 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 Securities from the Securityholder requesting such transfer or exchange.

At the option of the Holder, Securities may be exchanged for other Securities of any authorized denomination or denominations, of a like aggregate principal amount, upon surrender of the Securities to be exchanged, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Securityholder or such Securityholder's attorney duly authorized in writing, at such office or agency. Whenever any Securities are so

surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that 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 Securities selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed) or any Securities in respect of which a Purchase Notice or Change in Control Purchase Notice has been given and not withdrawn by the Holder thereof in accordance with the terms of this Indenture (except, in the case of Securities to be purchased in part, the portion thereof not to be purchased) or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

(b) Notwithstanding any provision to the contrary herein, so long as a Global Security remains outstanding and is held by or on behalf of the Depository, transfers of a Global Security, 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 Security shall be limited to transfers of such Global Security in whole, or in part, to nominees of the Depository or to a successor of the Depository 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 Securities.

(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 Securities upon transfer or exchange of Securities.

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

(f) If Securities are issued upon the transfer, exchange or replacement of Securities subject to restrictions on transfer and bearing the legends set forth on the forms of Securities attached hereto as Exhibits A-1 and A-2 setting forth such restrictions (collectively, the "Legend"), or if a request is made to remove the Legend on a Security, the Securities so issued shall bear the Legend, or the Legend shall not be removed, as the case may be, unless there is delivered to the Company and the Registrar such satisfactory evidence, which shall include an Opinion of Counsel, 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 under the Securities Act or that such Securities 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 Security pursuant to a registration statement that is effective at the time of such sale, the Trustee, at the written direction of the Company, shall authenticate and deliver a Security that does not bear the Legend. If the Legend is removed from the face of a Security and the Security is subsequently held by an Affiliate of the Company, the Legend shall be reinstated.

Section 2.07. Replacement Securities. If any mutilated Security is surrendered to the Trustee, or the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and there is delivered to the Company and the Trustee such security 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 Security has been acquired by a protected purchaser (within the meaning of Section 8-303 of the Uniform Commercial Code), the Company shall execute, and upon the Company's written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

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

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

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

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

Section 2.08. Outstanding Securities; Determinations of Holders' Action. Securities outstanding at any time are all the Securities authenticated by the Trustee, except for those cancelled by it, those paid pursuant to Section 2.07, those delivered to it for cancellation pursuant to Section 2.10 and those described in this Section 2.08 as not outstanding. A Security does not cease to be outstanding because the Company or an Affiliate thereof holds the Security; provided, however, that in determining whether the Holders of the requisite principal amount of Securities have given or concurred in any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities 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 Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Subject to the foregoing, only Securities 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 Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a protected purchaser.

If the Paying Agent holds, in accordance with this Indenture, on a Redemption Date, or on the Business Day following a Purchase Date or a Change in Control Purchase Date, or on Stated Maturity, money sufficient to pay amounts owed with respect to Securities payable on that date, then immediately after such Redemption Date, Purchase Date, Change in Control Purchase Date or Stated Maturity, as the case may be, such Securities shall cease to be outstanding and interest (including Contingent Interest and Liquidated Damages, if any), on such Securities shall cease to accrue; provided that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made.

If a Security is converted in accordance with Article 10, then from and after the time of conversion on the Conversion Date, such Security shall cease to be outstanding and interest (including Contingent Interest, if any), shall cease to accrue on such Security.

Section 2.09. Temporary Securities. Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities 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 Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

Section 2.10. Cancellation. All Securities surrendered for payment, purchase by the Company pursuant to Article 3, conversion, redemption or registration of transfer or exchange (other than Securities converted pursuant to Section 10.02) shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. The Company may not issue new Securities to replace Securities it has paid or delivered to the Trustee for cancellation or that any Holder has converted pursuant to Article 10. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this

Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be disposed of by the Trustee in accordance with the Trustee's customary procedure.

Section 2.11. Persons Deemed Owners. Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of the principal amount of the Security or the payment of any Redemption Price, Purchase Price or Change in Control Purchase Price in respect thereof, and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, for the purpose of conversion and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 2.12. Global Securities.

(a) A Global Security may not be transferred, in whole or in part, to any Person other than the Depository or a nominee or any successor thereof, and no such transfer to any such other Person may be registered; provided that the foregoing shall not prohibit any transfer of a Security that is issued in exchange for a Global Security but is not itself a Global Security. No transfer of a Security to any Person shall be effective under this Indenture or the Securities, unless and until such Security has been registered in the name of such Person. Notwithstanding any other provisions of this Indenture or the Securities, transfers of a Global Security, in whole or in part, shall be made only in accordance with Section 2.06 and this Section 2.12.

(b) Subject to the succeeding paragraph, every Security 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 Security is presented or surrendered for registration of transfer or for exchange for a Security registered in a name other than that of the Holder, such Security must be accompanied by a certificate in substantially the form set forth in Exhibit B, dated the date of such surrender and signed by the Holder of such Security, as to compliance with such restrictions on transfer. The Registrar shall not be required to accept for such registration of transfer or exchange any Security not so accompanied by a properly completed certificate.

(c) The restrictions imposed by the Legend upon the transferability of any Security shall cease and terminate when such Security has been sold pursuant to an effective registration statement under the Securities Act or transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or, if earlier, upon the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision). Any Security as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon a surrender of such Security for exchange to the Registrar in accordance with the provisions of this Section 2.12 (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144 or any successor provision, by an Opinion of Counsel having

substantial experience in practice under the Securities Act and otherwise reasonably acceptable to the Company and the Registrar, addressed to the Company and in form acceptable to the Company, to the effect that the transfer of such Security has been made in compliance with Rule 144 or such successor provision), be exchanged for a new Security, of like tenor and aggregate principal amount, which shall not bear the restrictive Legend. The Company shall inform the Trustee of the effective date of any registration statement registering the Securities under the Securities Act. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned Opinion of Counsel or registration statement.

(d) As used in the preceding clause (b) and (c) of this Section 2.12, the term “transfer” encompasses any sale, pledge, transfer, hypothecation or other disposition of any Security.

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

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

(ii) Securities issued in exchange for a Global Security or any portion thereof shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Security or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depository shall designate and shall bear the applicable legends provided for herein. Any Global Security to be exchanged in whole shall be surrendered by the Depository to the Trustee, as Registrar. With regard to any Global Security to be exchanged in part, either such Global Security shall be so surrendered for exchange or, if the Trustee is acting as

custodian for the Depositary or its nominee with respect to such Global Security, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and deliver the Security issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(iii) Subject to the provisions of clause (v) below, the registered Holder may grant proxies and otherwise authorize any Person, including Agent Members (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 Securities.

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

(v) Neither 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 Security registered in the name of the Depositary or any nominee thereof, or under any such Global Security, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Security.

(vi) With respect to any Global Security, the Company, the Registrar and the Trustee shall be entitled to treat the Person in whose name such Global Security is registered as the absolute owner of such Security for all purposes of this Indenture, and neither the Company, the Registrar nor the Trustee shall have any responsibility or obligation to any Agent Members or other beneficial owners of the Securities represented by such Global Security. Without limiting the immediately preceding sentence, neither the Company, the Registrar nor the Trustee shall have any responsibility or obligation with respect to (a) the accuracy of the records of any Depositary or any other Person with respect to any ownership interest in any Global Security, (b) the delivery to any Person, other than a Holder, of any notice with respect to the Securities represented by a Global Security, including any notice of redemption or refunding, (c) the selection of the particular Securities or portions thereof to be redeemed or refunded in the event of

a partial redemption or refunding of part of the Securities Outstanding or (d) the payment to any Person, other than a Holder, of any amount with respect to the principal of, redemption premium, if any, purchase price or interest (including Contingent Interest and Liquidated Damages) with respect to any Global Security.

Section 2.13. CUSIP Numbers. The Company may issue the Securities with one or more “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” 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 Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, 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 numbers.

### ARTICLE 3

#### REDEMPTION AND PURCHASES

Section 3.01. Right To Redeem; Notices To Trustee.

(a) Optional Redemption. The Company, at its option, may redeem the Securities in accordance with the provisions of paragraphs 5 and 7 of the Securities and at the Redemption Price specified in paragraph 5 of the Securities, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), thereon up to but not including the Redemption Date; provided that if the Redemption Date is on or after an interest record date, but on or prior to the related interest payment date, interest will be payable to the Holders in whose names the Securities are registered at the close of business on the relevant record date for payment of such interest.

(b) Notice to Trustee. If the Company elects to redeem Securities pursuant to this Section 3.01, it shall notify the Trustee in writing of the Redemption Date, the principal amount of Securities to be redeemed and the Redemption Price. The Company shall give the notice to the Trustee provided for in this Section 3.01(b) by a Company Order at least 30 days but not more than 60 days before the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee).

Section 3.02. Selection of Securities to Be Redeemed. If less than all the Securities are to be redeemed, subject to the procedures of the Depository in the case of Global Securities to be so redeemed, the Trustee shall select the Securities to be redeemed by any method that the Trustee deems fair and appropriate. The Trustee may select for redemption portions of the principal amount of Securities that have denominations of \$1,000 and integral multiples thereof.

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

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

Section 3.03. Notice of Redemption. At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail a notice of redemption by first-class mail, postage prepaid, to each Holder of Securities to be redeemed.

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

- (a) the Redemption Date;
- (b) the Redemption Price and, to the extent known at the time of such notice the amount of interest (including Contingent Interest and Liquidated Damages, if any), payable on the Redemption Date;
- (c) the current Conversion Price;
- (d) the name and address of the Paying Agent and Conversion Agent;
- (e) that Securities called for redemption may be converted at any time before the close of business on the second Business Day immediately preceding the Redemption Date;
- (f) that Holders who want to convert Securities must satisfy the requirements set forth in paragraph 8 of the Securities;
- (g) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price therefor, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any);
- (h) if fewer than all the outstanding Securities are to be redeemed, the certificate numbers, if any, and principal amounts of the particular Securities to be redeemed;
- (i) that, unless the Company defaults in making such payment, interest (including Contingent Interest and Liquidated Damages, if any), on Securities called for redemption will cease to accrue on and after the Redemption Date and the Securities will cease to be convertible; and
- (j) the CUSIP number of the Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense; provided that the Company makes such request prior to the date by which such notice of redemption must be given to Holders in accordance with this Section 3.03 and the Company provides the Trustee with all information required for such notice of redemption.

Section 3.04. Effect of Notice of Redemption. Once notice of redemption is given, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), thereon stated in the notice, except for Securities which are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price stated in the notice, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), thereon, up to but not including the Redemption Date.

Section 3.05. Deposit of Redemption Price. Prior to 11:00 a.m. (New York City time) on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the aggregate Redemption Price of all Securities to be redeemed on that date, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), thereon, up to but not including the Redemption Date other than Securities or portions of Securities called for redemption that on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money not required for that purpose because of conversion of Securities pursuant to Article 10. If such money is then held by the Company in trust and is not required for such purpose it shall be discharged from such trust.

Section 3.06. Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder, without service charge, a new Security or Securities, 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 amount of the Security surrendered.

Section 3.07. Sinking Fund. There shall be no sinking fund provided for the Securities.

Section 3.08. Purchase of Securities at Option of the Holder.

(a) General. Securities shall be purchased by the Company in accordance with the provisions of paragraph 6 of the Securities on July 18, 2010, July 18, 2013 and July 18, 2018 (each, a "Purchase Date") at a purchase price in cash per Security equal to 100% of the aggregate principal amount of the Security (the "Purchase Price"), together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), thereon, up to but not including the Purchase Date.

Purchases of Securities hereunder shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Company and the Paying Agent by the Holder of a written notice of purchase (a "Purchase Notice") at any time from the opening of business on the date that is 30 Business Days prior to the Purchase Date until the close of business on the Business Day prior to such Purchase Date stating:

- (A) the certificate number of the Security which the Holder will deliver to be purchased;
- (B) the portion of the principal amount of the Security which the Holder will deliver to be purchased, which portion must be in principal amounts of \$1,000 or an integral multiple thereof; and
- (C) that such Security shall be purchased as of the Purchase Date pursuant to the terms and conditions specified in paragraph 6 of the Securities and in this Indenture.

(ii) delivery or book-entry transfer of such Security to the Paying Agent prior to, on or after the Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent, such delivery being a condition to receipt by the Holder of the Purchase Price therefor, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any); provided, however, that such Purchase Price, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), shall be so paid pursuant to this Section 3.08 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Purchase Notice, as determined by the Company in its sole discretion.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.08, a portion of a Security 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 Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.08 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Purchase Date and the time of delivery or book-entry transfer of the Security.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Purchase Notice contemplated by this Section 3.08(a) shall have the right to withdraw such Purchase Notice at any time prior to the close of business on the Purchase Date by delivery of a written notice of withdrawal to the Paying Agent at the principal office of the Paying Agent in accordance with Section 3.10.

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

(b) Company Notice. In connection with any purchase of Securities pursuant to Section 3.08 or 3.09, the Company shall give written notice of the Purchase Date or Change in Control Purchase Date, as applicable, to the Holders (the "Company Notice"). The Company Notice shall be sent by first-class mail to the Trustee and to each Holder not less than 30 Business Days prior to any Purchase Date (the "Company Notice Date") or not more than 30

days after the occurrence of a Change in Control, as the case may be. Each Company Notice shall include a form of Purchase Notice to be completed by a Holder and shall state:

- (i) the Purchase Price, Change in Control Purchase Price, Conversion Price and, to the extent known at the time of such notice, the amount of Contingent Interest and Liquidated Damages, if any, that will be payable with respect to the Securities on the Purchase Date;
- (ii) the name and address of the Paying Agent and the Conversion Agent;
- (iii) that Securities as to which a Purchase Notice or Change in Control Purchase Notice has been given may be converted only if the applicable Purchase Notice or Change in Control Purchase Notice has been withdrawn in accordance with the terms of this Indenture;
- (iv) that Securities must be surrendered to the Paying Agent to collect payment of the Purchase Price or Change in Control Purchase Price and accrued but unpaid interest and Contingent Interest and Liquidated Damages, if any;
- (v) that the Purchase Price or Change in Control Purchase Price for any Securities as to which a Purchase Notice or Change in Control Purchase Notice has been given and not withdrawn, together with any accrued Contingent Interest and Liquidated Damages payable with respect thereto, shall be paid promptly following the later of the Purchase Date or Change in Control Purchase Date and the time of surrender of such Securities as described in (iv);
- (vi) the procedures the Holder must follow under Section 3.08 or Section 3.09, as the case may be;
- (vii) briefly, the conversion rights of the Securities;
- (viii) that, unless the Company defaults in making payment of such Purchase Price or Change in Control Purchase Price, interest (including Contingent Interest and Liquidated Damages, if any), on Securities covered by any Purchase Notice or Change in Control Purchase Notice will cease to accrue on and after the Purchase Date or Change in Control Purchase Date;
- (ix) the CUSIP or ISIN number of the Securities; and
- (x) the procedures for withdrawing a Purchase Notice or Change in Control Purchase Notice (as specified in Section 3.10).

At the Company's request and at the Company's expense, the Trustee shall give the Company Notice in the Company's name; provided, however, that, in all cases, the text of the Company Notice shall be prepared by the Company.

(a) If at any time that Securities remain outstanding there shall have occurred a Change in Control, Securities shall be repurchased by the Company, at the option of the Holder thereof, at a purchase price in cash (the "Change in Control Purchase Price") equal to the principal amount plus accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), thereon, up to but not including the date (the "Change in Control Purchase Date") fixed by the Company that is not less than 30 days nor more than 45 days after the date the Company Notice is given, subject to satisfaction by or on behalf of the Holder of the requirements set forth in Section 3.09(c); provided that if the Change in Control Purchase Date is on or after an interest record date but on or prior to the related interest payment date, interest and Liquidated Damages, if any, will be payable to the Holders in whose names the Securities are registered at the close of business on the relevant record date.

(b) The Company, or at its request (which must be received by the Trustee at least three Business Days (or such lesser period as agreed to by the Trustee) prior to the date the Trustee is requested to give such notice as described below) the Trustee in the name of and at the expense of the Company, shall mail to all Holders of record of the Securities a notice (a "Company Change in Control Notice") of the occurrence of a Change in Control and of the repurchase right arising as a result thereof, including the information required by Section 3.08(b) hereof, not more than 30 days after the occurrence of such Change in Control. The Company shall promptly furnish to the Trustee a copy of such notice.

(c) For a Security to be so repurchased at the option of the Holder, the Paying Agent must receive such Security with the form entitled "Option to Elect Repurchase Upon a Change in Control" (a "Change in Control Purchase Notice") on the reverse thereof duly completed, together with such Security duly endorsed for transfer, on or before the Change in Control Purchase Date. All questions as to the validity, eligibility (including time of receipt) and acceptance of any Security for redemption shall be determined by the Company, whose determination shall be final and binding.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.09, a portion of a Security 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 Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.09 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Change in Control Purchase Date and the time of delivery of the Security to the Paying Agent in accordance with this Section 3.09.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Change in Control Purchase Notice contemplated by this Section 3.09(c) shall have the right to withdraw such Change in Control Purchase Notice at any time prior to the close of business on the Change in Control Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.10.

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

Notwithstanding anything herein to the contrary, the Company's obligations pursuant to this Section 3.09 shall be satisfied if a third party makes an offer to repurchase outstanding Securities after a Change in Control in the manner and at the times and otherwise in compliance in all material respects with the requirements of this Section 3.09 and purchases all Securities properly tendered and not withdrawn pursuant to the requirements of this Section 3.09.

Section 3.10. Effect of Purchase Notice or Change in Control Purchase Notice. Upon receipt by the Paying Agent of the Purchase Notice or Change in Control Purchase Notice specified in Section 3.08 or Section 3.09(c), as applicable, the Holder of the Security in respect of which such Purchase Notice or Change in Control Purchase Notice, as the case may be, was given shall (unless such Purchase Notice or Change in Control Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Purchase Price or Change in Control Purchase Price, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), thereon, to but not including the Purchase Date or Change in Control Purchase Date, as the case may be, with respect to such Security. Such Purchase Price or Change in Control Purchase Price, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), thereon, to but not including the Purchase Date or Change in Control Purchase Date, as the case may be, shall be paid to such Holder, subject to receipt of funds by the Paying Agent, promptly following the later of (x) the Purchase Date or the Change in Control Purchase Date, as the case may be, with respect to such Security (provided that the conditions in Section 3.08 or Section 3.09, as applicable, have been satisfied) and (y) the time of delivery or book-entry transfer of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.08 or Section 3.09(c), as applicable. Securities in respect of which a Purchase Notice or Change in Control Purchase Notice, as the case may be, 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 Purchase Notice or Change in Control Purchase Notice, as the case may be, unless such Purchase Notice or Change in Control Purchase Notice, as the case may be, has first been validly withdrawn as specified in the following two paragraphs.

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

- (i) the certificate number, if any, of the Security in respect of which such notice of withdrawal is being submitted;
- (ii) the principal amount of the Security with respect to which such notice of withdrawal is being submitted; and
- (iii) the principal amount, if any, of such Security which remains subject to the original Purchase Notice or Change in Control Purchase Notice, as the case may be, and which has been or will be delivered for purchase by the Company.

There shall be no purchase of any Securities pursuant to Section 3.08 or Section 3.09 or redemption pursuant to Section 3.01 if there has occurred prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Purchase Notice (or Change in Control Purchase Notice, as the case may be) and is continuing an Event of Default (other than a default in the payment of the Purchase Price or Change in Control Purchase Price, as the case may be). The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which a Purchase Notice or Change in Control Purchase Notice, as the case may be, 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 Purchase Price or Change in Control Purchase Price, as the case may be) in which case, upon such return, the Purchase Notice or Change in Control Purchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.11. Deposit of Purchase Price or Change in Control Purchase Price. Prior to 11:00 a.m. (New York City time) on the Business Day prior to the Purchase Date or the Change in Control Purchase Date, as the case may be, 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) sufficient to pay the aggregate Purchase Price or Change in Control Purchase Price, as the case may be, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, to but not including the Purchase Date or Change in Control Purchase Date, as the case may be, of all the Securities or portions thereof which are to be purchased as of the Purchase Date or Change in Control Purchase Date, as the case may be.

Section 3.12. Securities Purchased in Part. Any Certificated Security that 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 Security, without service charge, a new Security or Securities, 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 Security so surrendered which is not purchased.

Section 3.13. Covenant to Comply with Securities Laws upon Purchase of Securities. When complying with the provisions of Sections 3.08 or 3.09 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 in all material respects with Rule 13e-4 and Rule 14e-1 under the Exchange Act, (ii) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, and (iii) otherwise comply in all material respects with all Federal and state securities laws so as to permit the rights and obligations under Sections 3.08 or 3.09 to be exercised in the time and in the manner specified in Sections 3.08 or 3.09.

Section 3.14. Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any cash that remains unclaimed as provided in paragraph 11 of the Securities, together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)), held by them for the payment of the Purchase Price or Change in Control Purchase Price, as the case may be, and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any); provided, however, that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.11 exceeds the aggregate Purchase Price or Change in Control Purchase Price, as the case may be, of the Securities or portions thereof which the Company is obligated to purchase as of the Purchase Date or Change in Control Purchase Date, as the case may be, and accrued but unpaid interest thereon (including Contingent Interest and Liquidated Damages, if any), then, unless otherwise agreed in writing with the Company, promptly after the Business Day following the Purchase Date or Change in Control Purchase Date, as the case may be, the Trustee shall return any such excess to the Company together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)).

#### ARTICLE 4

#### COVENANTS

Section 4.01. Payment of Securities. The Company shall promptly make all payments in respect of the Securities on the dates and in the manner provided in the Securities or pursuant to this Indenture. Any amounts to be given to the Trustee or Paying Agent, as the case may be, shall be deposited with the Trustee or Paying Agent, as the case may be, by 11:00 a.m. (New York City time), on the dates required pursuant to Section 2.04 hereof. Interest installments, Liquidated Damages, principal amount, Redemption Price, Purchase Price, Change in Control Purchase Price and interest, if any, due on overdue amounts shall be considered paid on the applicable date due if at 11:00 a.m. (New York City time) on such date (or, in the case of a Purchase Price or Change in Control Purchase Price, on the Business Day prior to the applicable Purchase Date or Change in Control Purchase Date, as the case may be) the Trustee or the Paying Agent, as the case may be, holds, in accordance with this Indenture, money sufficient to pay all such amounts then due.

The Company shall, to the extent permitted by law, pay interest on overdue amounts at the rate per annum set forth in paragraph 1 of the Securities, 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. The accrual of such interest on overdue amounts shall be in addition to the continued accrual of interest on the Securities.

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. In the event the Company is at any time no longer subject to the

reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall continue to provide the Trustee with reports containing substantially the same information as would have been required to be filed with the SEC had the Company continued to have been subject to such reporting requirements. In such event, such reports shall be provided to the Trustee at the times the Company would have been required to provide reports had it continued to have been subject to such reporting requirements. In addition, the Company 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 September 30, 2004) 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 Securities may be presented or surrendered for payment, where Securities 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 Securities and this Indenture may be served. The Trustee's office located at American Stock Transfer & Trust Company, 59 Maiden Lane, New York, New York, 10038 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 or agency 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 Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, the City of New York, for such purposes.

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 Owner of Securities or holder or Beneficial Owner of Common Stock delivered 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 Owner of Securities or holder or Beneficial Owner of Common Stock, 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 or any successor provisions. Whether a Person is a Beneficial Owner shall be determined by the Company to the Company’s reasonable satisfaction.

Section 4.07. Tax Treatment of Securities. The Company and the Holders, by purchasing the Securities, agree that (i) the Securities are contingent payment debt instruments as defined in Treasury Regulations Section 1.1275-4(b), (ii) each Holder shall be bound by the Company’s application of the Treasury Regulations to the Securities, including the Company’s determination that the rate at which interest will be deemed to accrue on the Securities for United States federal income tax purposes will be 8.50% compounded semi-annually, which is the rate comparable to the rate at which the Company would borrow on a noncontingent, nonconvertible basis with terms and conditions otherwise comparable to the Securities, (iii) each Holder shall use the projected payment schedule with respect to the Securities determined by the Company, as required by Treasury Regulations Section 1.1275-4(b)(4)(iv), to determine its interest accruals and adjustments as provided in Treasury Regulations Section 1.1275-4(b), and (iv) the Company and each Holder will not take any position on a tax return inconsistent with (i), (ii), or (iii), unless required by applicable law.

Section 4.08. Liquidated Damages. If at any time Liquidated Damages become payable by the Company pursuant to the Registration Rights Agreement, the Company shall promptly deliver to the Trustee a certificate to that effect and stating (i) the amount of such Liquidated Damages that are payable and (ii) the date on which such damages are payable pursuant to the terms of the Registration Rights Agreement. Unless and until a Responsible Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no Liquidated Damages are payable. If the Company has paid Liquidated Damages directly to the Persons entitled to them, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

## ARTICLE 5

### SUCCESSOR CORPORATION

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

- (i) (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 (a) shall be a corporation or limited liability company organized and validly existing under the laws of the United States or any State thereof or the District of Columbia, and (b) 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 Securities and this Indenture;

(ii) immediately after giving effect to such transaction, no Default shall have occurred and be continuing; and

(iii) 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 (except in the case of a lease) 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 except for obligations the Company may have under a supplemental indenture pursuant to Section 9.06, the Company shall be discharged from all obligations and covenants under this Indenture and the Securities. 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, as applicable.

## ARTICLE 6

### DEFAULTS AND REMEDIES

Section 6.01. Events of Default. Subject to the provisions set forth below in this Section 6.01, each of the following events is an "Event of Default":

(a) the failure to pay interest (including Contingent Interest and Liquidated Damages, if any) on any Securities when the same becomes due and payable and the default continues for a period of 30 days, whether or not such failure shall be due to compliance with Article 11 of this Indenture or agreements with respect to any other Indebtedness or any other reason;

(b) the failure to pay the principal of any Securities, when such principal becomes due and payable, at maturity, upon acceleration, upon redemption or otherwise (including the failure to make an offer to repurchase the Securities upon a Change in

Control or make a payment to purchase Securities tendered pursuant to a Purchase Notice or Change in Control Purchase Notice), whether or not such failure shall be due to compliance with Article 11 of this Indenture or agreements with respect to any other Indebtedness or any other reason;

- (c) the failure to provide a Company Change in Control Notice in accordance with the terms of Section 3.09(b) hereof;
- (d) a default in the observance or performance of any other covenant or agreement contained in this Indenture which default continues for a period of 30 days after the Company receives written notice specifying the default (and demanding that such default be remedied) from the Trustee or the Holders of at least 25% of the outstanding principal amount of the Securities (except in the case of a default with respect to Section 5.01, which will constitute an Event of Default with such notice requirement but without such passage of time requirement);
- (e) the failure to pay at final maturity (giving effect to any applicable grace periods and any extensions thereof) the principal amount of any Recourse Indebtedness of the Company or any Subsidiary of the Company, or the acceleration of the final stated maturity of any such Recourse Indebtedness if the aggregate principal amount of such Recourse Indebtedness, together with the principal amount of any other such Recourse Indebtedness in default for failure to pay principal at final maturity or which has been accelerated, aggregates \$25.0 million or more at any time;
- (f) one or more judgments in an aggregate amount in excess of \$25.0 million shall have been rendered against the Company or any of its Subsidiaries and remain undischarged, unpaid or unstayed for a period of 60 days after such judgment or judgments become final and nonappealable;
- (g) The Company or any of its Significant Subsidiaries pursuant to or under or within the meaning of any Bankruptcy Law:
  - (i) commences a voluntary case or proceeding;
  - (ii) consents to the entry of an order for relief against it in an involuntary case or proceeding;
  - (iii) consents to the appointment of a custodian of it or for all or substantially all of its property;
  - (iv) makes a general assignment for the benefit of its creditors; or
  - (v) shall generally not pay its debts when such debts become due or shall admit in writing its inability to pay its debts generally; or
- (h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  - (i) is for relief against the Company or any Significant Subsidiary of the Company in an involuntary case or proceeding;

(ii) appoints a custodian of the Company or any Significant Subsidiary of the Company for all or substantially all of its properties; or

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

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

The Events of Default described in clauses (e), (f), (g) and (h) above with respect to a Subsidiary shall not apply if such Person was not a Subsidiary at the time such event or condition occurred unless, in the case of clause (e) or (f) above, the Company or another Subsidiary thereof assumes or otherwise becomes liable for the liability referred to therein or the liabilities generally of such Person.

Section 6.02. Acceleration.

(a) If an Event of Default (other than an Event of Default specified in clause (g) or (h) of Section 6.01) shall occur and be continuing, the Trustee may, and at the request of the Holders of at least 25% in principal amount of outstanding Securities shall, declare the principal of and accrued interest (including Contingent Interest and Liquidated Damages, if any), on all the Securities to be due and payable by notice in writing to the Company (the "Acceleration Notice"). Such notice shall specify the respective Event of Default and that it is a "notice of acceleration." Upon the giving of such notice, the principal of and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) on all Securities (i) shall become immediately due and payable or (ii) if there are any amounts outstanding under the Credit Agreement, shall become immediately due and payable upon the first to occur of an acceleration under the Credit Agreement or five Business Days after receipt by the Company and the Representative under the Credit Agreement of such Acceleration Notice but only if such Event of Default is then continuing. If an Event of Default specified in clause (g) or (h) of Section 6.01 occurs and is continuing with respect to Company, then all unpaid Obligations on all of the outstanding Securities shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

(b) At any time after a declaration of acceleration with respect to the Securities as described in the preceding paragraph, the Holders of a majority in aggregate principal amount of the Securities may rescind and cancel such declaration and its consequences (i) if the rescission would not conflict with any judgment or decree, (ii) if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of such acceleration, (iii) if interest on overdue installments of interest (to the extent the payment of such interest is lawful) and on overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid, (iv) if the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances and (v) in the event of the cure or waiver of an Event of Default of the type described in clause (e) of Section 6.01, the Trustee shall have received an Officers' Certificate and an Opinion of Counsel that such Event of Default has been cured or waived. 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 continuing, the Trustee may pursue any available remedy to collect the payment of the principal amount of all the Securities plus accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), thereon, or to enforce the performance of any provision of the Securities or this Indenture.

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

Section 6.04. Waiver of Past Defaults. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding, by notice in writing to the Trustee (and without notice to any other Securityholder), may waive an existing Default and its consequences, except (i) an Event of Default described in Section 6.01(a) or 6.01(b), (ii) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Holder affected or (iii) a Default which constitutes a failure to convert any Security 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 Securities 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 Holders or would involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it. 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 Holder may not pursue any remedy with respect to this Indenture or the Securities unless:

- (a) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;
- (b) the Holders of at least 25% in aggregate principal amount of the Securities at the time outstanding make a written request to the Trustee to pursue the remedy;
- (c) such Holder or Holders offer to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

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

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

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

Section 6.07. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of interest installments (including Contingent Interest and Liquidated Damages, if any), the principal amount, Redemption Price, Purchase Price, Change in Control Purchase Price or interest, if any, due on overdue amounts in respect of the Securities held by such Holder, on or after the respective due dates expressed in the Securities, and to convert the Securities 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(a) or 6.01(b) 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 Securities and the amounts provided for in Section 7.07.

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 Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether any amounts in respect of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any such amount) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for any accrued but unpaid amounts due in respect of the Securities, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel or any other amounts due the Trustee under Section 7.07) 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 7.07.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10. Priorities. If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

FIRST: to the Trustee for amounts due under Section 7.07;

SECOND: to Holders for amounts due and unpaid on the Securities and for any accrued but unpaid interest amounts due in respect of the Securities, ratably, without preference or priority of any kind, according to such amounts due and payable on the Securities ; and

THIRD: the balance, if any, to the Company.

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

Section 6.11. Suits. 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 Securities 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 fullest 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 any amounts due in respect of the Securities, as contemplated herein, or which may affect the covenants or the performance of this Indenture; and the Company (to the fullest 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 of Trustee.

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

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

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture, but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein.

This Section 7.01(b) shall be in lieu of Section 315(a) of the TIA and such Section 315(a) is hereby expressly excluded from this Indenture, as permitted by the TIA.

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

(i) this paragraph (c) does not limit the effect of paragraph (b) of this Section 7.01;

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

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

Section 7.01(c)(i), (ii) and (iii) shall be in lieu of Sections 315(d)(1), 315(d)(2) and 315(d)(3) of the TIA and such Sections 315(d)(1), 315(d)(2) and 315(d)(3) are hereby expressly excluded from this Indenture, as permitted by the TIA.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to Section 7.01(a), (b), (c), (e) and (f).

(e) The Trustee may refuse to perform any duty or exercise any right or power or expend or risk its own funds or otherwise incur any financial liability unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee (acting in any capacity hereunder) shall be under no liability for interest on any money received by it hereunder unless otherwise agreed in writing with the Company.

Section 7.02. Rights of Trustee. Subject to its duties and responsibilities under the TIA,

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

(b) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may obtain and, in the absence of bad faith or negligence on its part, conclusively rely upon an Officers' Certificate and/or an Opinion of Counsel;

(c) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, attorney, custodian or nominee appointed with due care by it hereunder;

(d) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith which it reasonably believes to be authorized or within its rights or powers conferred under this Indenture;

(e) the Trustee may consult with counsel selected by it and any advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion of such counsel;

(f) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders, pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby;

(g) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Order and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution;

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

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

(j) the rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including Paying Agent, Registrar and Conversion Agent), and to all other Persons employed to act hereunder, including the Trustee's officers, employees, agents and custodians;

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

(l) Neither the Trustee nor any of its officers, directors, employees or agents shall be liable for any action taken or omitted under this Indenture or in connection therewith except to the extent caused by the Trustee's gross negligence, bad faith or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review. Anything in this Indenture to the contrary notwithstanding, in no event shall the Trustee be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(m) The Trustee is not required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture; and

(n) Notwithstanding anything else herein contained, whenever any provision of this Indenture indicates that any confirmation of a condition or event is qualified by the words "to the knowledge of" or "known to" the Trustee or other words of similar meaning, said words

shall mean and refer to the current awareness of one or more Responsible Officers who are located at the Corporate Trust Office.

Section 7.03. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, Conversion Agent or co-registrar may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

Section 7.04. Trustee's Disclaimer. The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, shall not be accountable for the Company's use or application of the proceeds from the Securities, and shall not be responsible for any statement in any registration statement for the Securities under the Securities Act or in any offering document for the Securities, the Indenture or the Securities (other than its certificate of authentication), or the determination as to which beneficial owners are entitled to receive any notices hereunder.

Section 7.05. Notice of Defaults. If a Default occurs and if it is known to the Trustee, the Trustee shall give to each Securityholder notice of all current Defaults known to it within 90 days after any such Default occurs or, if later, within 15 days after it is known to the Trustee, unless such Default shall have been cured or waived before the giving of such notice. Notwithstanding the preceding sentence, except in the case of a Default described in Sections 6.01(a) and 6.01(b), the Trustee may withhold the notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or officers of the Trustee in good faith determines that withholding the notice is in the interests of Holders. The second sentence of this Section 7.05 shall be in lieu of the proviso to Section 315(b) of the TIA and such proviso is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 7.06. Reports by Trustee to Holders. Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA Section 313(a), if required by such Section 313(a), but only to the extent any such report is required to be given pursuant to said TIA Section 313(a), or any successor provision of the TIA. The Trustee also shall comply with TIA Section 313(b).

A copy of each report at the time of its mailing to Holders shall be filed with the SEC and each securities exchange, if any, on which the Securities are listed. The Company agrees to notify the Trustee promptly whenever the securities become listed on any Securities exchange and of any delisting thereof.

Section 7.07. Compensation and Indemnity. The Company agrees:

(a) to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as the Company and the Trustee shall from time to time agree in writing for all services rendered by it hereunder (which compensation shall not be limited (to the extent permitted by law) by any provision of law in regard to the compensation of a trustee of an express trust);

(b) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture or any documents executed in connection herewith (including the reasonable compensation and the expenses, advances and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(c) to indemnify the Trustee or any predecessor Trustee and their respective agents, officers, directors and employees for, and to hold them harmless against, any loss, damage, claim, liability, cost or expense (including attorneys' fees and expenses and taxes (other than taxes based upon, measured by or determined by the income of the Trustee)) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim (whether asserted by the Company or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

To secure the Company's payment obligations in this Section 7.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay interest installments (including Contingent Interest and Liquidated Damages, if any), the principal amount, Redemption Price, Purchase Price, Change in Control Purchase Price or interest, if any, due on overdue amounts, as the case may be, in respect of any particular Securities.

The Company's payment obligations pursuant to this Section 7.07 shall survive the discharge of this Indenture or the earlier termination or resignation of the Trustee. When the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(f) or Section 6.01(g), the expenses, including the reasonable charges and expenses of its counsel, are intended to constitute expenses of administration under any bankruptcy law.

Any amounts due and owing the Trustee hereunder (whether in nature of fees, expenses, indemnification payments or reimbursement for advances) which have not been paid by or on behalf of the Company within 15 days following written notice thereof given to the Company in accordance with the provisions of Section 12.02, shall bear interest at an interest rate equal to the Trustee's announced prime rate in effect from time to time, plus four percent (4.0%) per annum.

Section 7.08. Replacement of Trustee. The Trustee may resign by so notifying the Company; provided, however, that no such resignation shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 7.08. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding may remove the Trustee by so notifying the Trustee and the Company. The Company shall remove the Trustee if:

- (a) the Trustee fails to comply with Section 7.10;
- (b) the Trustee is adjudged bankrupt or insolvent;
- (c) a receiver or public officer takes charge of the Trustee or its property; or

(d) the Trustee otherwise becomes incapable of acting.

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

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company satisfactory in form and substance to the retiring Trustee and the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture; provided, however, notwithstanding the foregoing, the effectiveness of any such resignation or removal shall be conditioned on receipt by the retiring Trustee of all amounts due and owing under Section 7.07 hereof. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

If a successor Trustee does not take office within 30 days after the retiring Trustee gives its notice of resignation or is removed, the retiring Trustee, the Company or the Holders of a majority in aggregate principal amount of the Securities at the time outstanding may petition any court of competent jurisdiction at the expense of the Company for the appointment of a successor Trustee.

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

Section 7.09. Successor Trustee by Merger Etc. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets (including the administration of the trust created by this Indenture) to, another Person, the resulting, surviving or Person corporation without any further act shall be the successor Trustee.

Section 7.10. Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of TIA Section 310(a) (1). The Trustee (or its parent holding company) shall have a combined capital and surplus of at least \$10,000,000 as set forth in its most recent filed annual report of condition. Nothing herein contained shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA Section 310(b). The Trustee shall comply with TIA Section 310(b); provided, however, that there shall be excluded from the operation of TIA Section 310(b)(1) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in TIA Section 310(b)(1) are met.

Section 7.11. Preferential Collection of Claims Against Company. The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

## ARTICLE 8

### DISCHARGE OF INDENTURE

Section 8.01. Discharge of Liability on Securities. When (i) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (ii) all outstanding Securities have become due and payable and the Company deposits with the Trustee cash sufficient to pay all amounts due and owing on all outstanding Securities (other than Securities 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 7.07, 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 at the cost and expense of the Company and accompanied by an Officers' Certificate and Opinion of Counsel.

Section 8.02. Repayment to the Company. The Trustee and the Paying Agent shall return to the Company upon written request any money held by them for the payment of any amount and any shares of Common Stock with respect to the Securities that remain unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, as applicable, Holders entitled to the money or shares of Common Stock 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 Holders with respect to such money or shares of Common Stock 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 or supplement this Indenture or the Securities without notice to or consent of any Securityholder:

- (a) to comply with Article 5 or Section 10.12;
- (b) to cure any ambiguity, omission, defect or inconsistency, or to make any other change that does not adversely affect the rights of any Securityholder;
- (c) to make provisions with respect to the conversion right of the Holders pursuant to the requirements of Section 10.12 and Section 10.01;
- (d) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities; or
- (e) to comply with the provisions of the TIA, or with any requirement of the SEC arising as a result of the qualification of this Indenture under the TIA.

The Company and the Trustee may amend or supplement this Indenture or the Securities without notice to any Securityholder but with the written consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding. The Holders of a majority in aggregate principal amount of the Securities then outstanding may waive compliance by the Company with restrictive provisions of this Indenture other than as set forth in this Section 9.02 below, and waive any past Default under this Indenture and its consequences, except a Default in the payment of amounts due in respect of any Security or in respect of a provision which under this Indenture cannot be modified or amended without the consent of the Holder of each outstanding Security affected.

Subject to Section 9.04, without the written consent of each Securityholder affected, however, an amendment, supplement or waiver, including a waiver pursuant to Section 6.04, may not:

- (a) change the Stated Maturity of the principal of, or any payment date of any installment of interest (including Contingent Interest or Liquidated Damages, if any), if any, on, any Security;
- (b) reduce the principal amount of, or the rate of interest (including Contingent Interest or Liquidated Damages, if any), on, any Security, whether upon acceleration, redemption or otherwise, or alter the manner of calculation of interest or the rate of accrual thereof on any Security;
- (c) change the currency for payment of principal of, or interest (including Contingent Interest or Liquidated Damages, if any), or adversely affect the price or ratio at which Common Stock may be substituted for currency in connection with any payments made;
- (d) impair the right to institute suit for the enforcement of any payment of any amount with respect to any Security when due;
- (e) adversely affect the conversion rights provided in Article 10;
- (f) modify the provisions of this Indenture requiring the Company to make an offer to repurchase Securities upon a Change in Control pursuant to Section 3.09 after a Change in Control or to repurchase the Securities at the option of the Holders pursuant to Section 3.08 in any case;
- (g) reduce the percentage of principal amount of the outstanding Securities necessary to modify or amend this Indenture or to consent to any waiver provided for in this Indenture;
- (h) waive a Default in the payment of any amount with respect to any Security when due (except as provided in Section 6.02); or
- (i) make any changes in Section 6.04, Section 6.07 or this Section 9.02.

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

After an amendment under this Section 9.02 becomes effective, the Company shall mail to each Holder a notice briefly describing the amendment. Failure to mail the notice or a defect in the notice shall not effect the validity of 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. Until an amendment, waiver or other action by Holders becomes effective, a consent thereto by a Holder of a Security hereunder is a continuing consent by the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same obligation as the consenting Holder's Security, even if notation of the consent, waiver or action is not made on the Security. However, unless otherwise agreed in writing by such Holder or a predecessor Holder any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's Security or portion of the Security 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 Securityholder.

Section 9.05. Notation on or Exchange of Securities. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 9 may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Board of Directors of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Securities.

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, in the sole determination of the Trustee, adversely affect the rights, duties, powers, privileges, benefits, indemnities, 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 9, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes, and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

## ARTICLE 10

### CONVERSION OF THE SECURITIES

Section 10.01. Conversion Privilege. Subject to the provisions of this Article 10, a Holder of a Security may convert such Security into Common Stock, at the Conversion Price then in effect, if any of the following conditions is satisfied:

(a) during any calendar quarter (the “Quarter”) commencing after the Issue Date, if the Closing Price per share of Common Stock for at least 20 Trading Days in the period of 30 consecutive Trading Days ending on the last Trading Day of the Quarter immediately preceding such Quarter (appropriately adjusted to take into account the occurrence, during such 20 Trading Day period, of any event requiring adjustment of the Conversion Price under this Indenture) is more than 150% of the Conversion Price on such 30<sup>th</sup> Trading Day;

(b) the Security has been called for redemption by the Company pursuant to Section 3.01 and the redemption has not yet occurred;

(c) the conversion of such Security occurs during the five Trading Day period immediately after a period of five consecutive Trading Days in which the Security Trading Price for each Trading Day in such period was less than 95% of the product of the Closing Price per share of Common Stock on such Trading Day multiplied by the number of shares of Common Stock issuable (assuming satisfaction of conditions to conversion) upon conversion of \$1,000 in principal amount of the Securities; provided, that, with respect to any such conversion, if the Closing Price of the Common Stock as of such date of conversion is greater than the Effective Conversion Price but less than 150% of the Effective Conversion Price, then Holders shall receive in such conversion (a “Principal Value Conversion”), in lieu of Common Stock based on the Conversion Rate, a number of Shares of Common Stock equal to the principal amount of such Holder’s Security plus accrued but unpaid interest (including Contingent Interest), if any, as of the conversion date, divided by the Principal Value Conversion Share Price. The Principal Value Conversion Share Price shall be equal to the greater of (i) the Effective Conversion Price on the conversion date and (ii) the Closing Price of Common Stock on the conversion date. The Company shall deliver such Common Stock no later than the third Business Day following the determination of the Principal Value Conversion Share Price. The “Effective Conversion Price” as of any date of determination shall be equal to \$1,000 divided by the Conversion Rate as of the eighth Trading Day prior to the date of determination”;

(d) (i) an issuance of rights, warrants or options referred to in Section 10.06(b) occurs or (ii) a distribution referred to in Section 10.06(c) occurs where the fair market value of such distribution per share of Common Stock (as determined by the Board of Directors of the Company, which determination shall be conclusive evidence of such fair market value) exceeds 10% of the Closing Price per share of Common Stock on the Trading Day immediately preceding the date of declaration of such distribution; or

(e) (i) the Company is party to a consolidation, merger, share exchange, sale of all or substantially all of its assets or other similar transaction pursuant to which the Common Stock is subject to conversion into shares of stock (other than Common Stock), other securities or property (including cash) subject to Section 10.12 and (ii) the conversion of such Security occurs at any time from and after the date that is 15 days prior to the date of the anticipated effective time of such transaction until and including the date that is 15 days after the actual effective date of such transaction; provided, however, that if such conversion occurs after the effective date of such transaction, the Holder will receive on conversion the consideration determined in accordance with Section 10.12.

In the case of the foregoing clause (c), the Trustee (or other Conversion Agent appointed by the Company) shall have no obligation to determine the Security Trading Price unless the Company has requested such a determination; and the Company shall have no obligation to make such request unless a Holder provides it with reasonable evidence that the Security Trading Price per \$1,000 principal amount of such series of Securities would be less

than 95% of the product of the Closing Price per share of Common Stock on such Trading Date multiplied by the number of shares of Common Stock issuable (assuming satisfaction of conditions to conversion) upon conversion of \$1,000 in principal amount of the Securities. If such evidence is provided, the Company shall instruct the Trustee (or other Conversion Agent) to determine the Securities Trading Price of the Securities beginning on the next Trading Day and on each successive Trading Day until the Securities Trading Price per \$1,000 principal amount of such Securities is greater than or equal to 95% of the product of the Closing Price per share of Common Stock on such Trading Date multiplied by the number of shares of Common Stock issuable (assuming satisfaction of conditions to conversion) upon conversion of \$1,000 in principal amount of the Securities; provided that the Trustee shall be under no duty or obligation to make the calculations described in the foregoing clause (c) or to determine whether the Securities are convertible pursuant to such section. The Company shall make the calculations described in the foregoing clause (c), using the Securities Trading Price provided by the Trustee.

The Trustee shall be entitled at its sole discretion to consult with the Company and to request the assistance of and rely upon the Company in connection with the Trustee's duties and obligations pursuant to the foregoing clause (c) (including without limitation the calculation or determination of the Securities Trading Price), and the Company agrees, if requested by the Trustee, to cooperate with, and provide assistance to, the Trustee in carrying out its duties under the foregoing clause (c); provided, however, that nothing herein shall be construed to relieve the Trustee of its duties pursuant to the foregoing clause (c).

In the case of the foregoing clauses (d)(i) and (ii), the Company shall cause a notice of such issuance or distribution to be filed with the Trustee and the Conversion Agent and to be mailed to each Holder of Securities at its address appearing on the list provided for in Section 2.05, at least 20 days prior to the Ex-Dividend Date for such issuance or distribution. Once the Company has given such notice, Holders may surrender their Securities for conversion at any time thereafter until the earlier of the close of business on the Business Day prior to the Ex-Dividend Date or the Company's announcement that such issuance or distribution will not take place. This provision shall not apply if the Holder of a Security otherwise participates in the distribution without conversion.

The "Ex-Dividend Date" for any such issuance or distribution means the date immediately prior to the commencement of "ex-dividend" trading for such issuance or distribution on The New York Stock Exchange or such other national securities exchange or The Nasdaq Stock Market or similar system of automated dissemination of quotations of securities prices on which the Common Stock is then listed or quoted.

The number of shares of Common Stock issuable upon conversion of a Security shall be determined by dividing the principal amount of the Security or portion thereof surrendered for conversion by the Conversion Price in effect on the Conversion Date. The initial Conversion Price is set forth in paragraph 8 of the Securities and is subject to adjustment as provided in this Article 10. If any Securities are properly presented for conversion, the Company, at its option, instead of delivering the shares of Common Stock issuable upon conversion of such Securities, may pay the Holder the Cash Conversion Price.

A Holder may convert a portion of a Security equal to \$1,000 or any integral multiple thereof. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

If a Security is called for redemption pursuant to Article 3, the right to convert such Security shall terminate at the close of business on the second Business Day before the redemption date for such Security (unless the Company shall default in making the redemption payment then due, in which case the conversion right shall terminate on the date such Default is cured and such Security is redeemed). A Security in respect of which a Holder has delivered a Purchase Notice pursuant to Section 3.08 or a Change in Control Purchase Notice pursuant to Section 3.09 exercising the option of such Holder to require the Company to repurchase such Security may be converted only if such Purchase Notice or Change in Control Purchase Notice, as the case may be, is withdrawn by a written notice of withdrawal delivered to the Paying Agent prior to the close of business on the Purchase Date or prior to the close of business on the Change in Control Purchase Date, as the case may be, in accordance with Section 3.10.

A Holder of Securities is not entitled to any rights of a holder of Common Stock until such Holder has converted its Securities into Common Stock and, upon such conversion, only to the extent such Securities are deemed to have been converted into Common Stock pursuant to this Article 10.

Section 10.02. Conversion Procedure. To convert a Security, a Holder must satisfy the requirements in paragraph 8 of the Securities and (i) complete and manually sign the conversion notice on the back of the Security and deliver such notice to the Conversion Agent, (ii) surrender the Security to the Conversion Agent, (iii) furnish appropriate endorsements and transfer documents if required by the Registrar or the Conversion Agent, (iv) pay any transfer or other tax, if required by Section 10.04 and (v) if the Security is held in book-entry form, complete and deliver to the Depository appropriate instructions pursuant to the Depository's book-entry conversion programs. The date on which the Holder satisfies all of the foregoing requirements is the "Conversion Date". As soon as practicable after the Conversion Date and in any event within five Business Days, the Company shall deliver to the Holder through the Conversion Agent either (i) a certificate for or (ii) a book-entry notation of the number of whole shares of Common Stock issuable upon the conversion and cash in lieu of any fractional shares pursuant to Section 10.05.

The Person in whose name the Security is registered shall be deemed to be a stockholder of record on the Conversion Date; provided, however, that no surrender of a Security on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the Person or Persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the Person or Persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open (subject to the provisions of the next paragraph of this Section 10.02); provided, further, that such conversion shall be at the Conversion Price in effect on the date that such Security shall have been

surrendered for conversion, as if the stock transfer books of the Company had not been closed. Upon conversion of a Security, such Person shall no longer be a Holder of such Security.

If the Company elects to pay cash instead of issuing shares with regard to a Security properly presented for conversion, the Company shall notify the Holder and the Trustee of such election no later than the second Business Day after the Conversion Date of the Security. If the Holder does not withdraw such election to convert, the Company shall pay the Cash Conversion Price in respect of the Security converted in cash not later than the tenth Business Day after the Conversion Date.

No payment or adjustment will be made for accrued interest (including Contingent Interest or Liquidated Damages, if any), on a converted Security or for dividends or distributions on shares of Common Stock issued upon conversion of a Security (provided that the shares of Common Stock received upon conversion of Securities shall continue to accrue Liquidated Damages, as applicable, in accordance with the Registration Rights Agreement and shall be entitled to receive, at the next interest payment date, any accrued but unpaid Liquidated Damages with respect to the converted Securities), but if any Holder surrenders a Security for conversion between the record date for the payment of an installment of interest and the next interest payment date, then, notwithstanding such conversion, the interest (including Contingent Interest or Liquidated Damages, if any), payable on such interest payment date shall be paid to the Holder of such Security on such interest payment date. In such event, such Security, when surrendered for conversion, must be accompanied by delivery of a check payable to the Conversion Agent in an amount equal to the interest (including Contingent Interest or Liquidated Damages, if any), payable on such interest payment date on the portion so converted. If such payment does not accompany such Security, the Security shall not be converted; provided, however, that no such check shall be required if such Security has been called for redemption on a redemption date within the period between and including such record date and such interest payment date, or if such Security is surrendered for conversion on the interest payment date. If the Company defaults in the payment of interest (including Contingent Interest or Liquidated Damages, if any), payable on the interest payment date, the Conversion Agent shall repay such funds to the Holder.

No fractional shares of Common Stock shall be issued upon conversion of Securities. If more than one Security shall be surrendered for conversion at one time by the same holder, the number of full shares which shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share of Common Stock would be issuable upon the conversion of any Security or Securities, the Company shall make a payment in lieu thereof in cash based on the current market price of a share of Common Stock. For these purposes, the current market price of a share of Common Stock shall be the Closing Price per share of Common Stock on the first Business Day immediately preceding the day on which the Securities (or specified portions thereof) are deemed to have been converted.

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

Section 10.03. Adjustments Below Par Value. Before taking any action which would cause an adjustment decreasing the Conversion Price so that the shares of Common Stock issuable upon conversion of the Securities would be issued for less than the par value of such Common Stock, the Company will take all corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of such Common Stock at such adjusted Conversion Price.

Section 10.04. Taxes on Conversion. If a Holder converts a Security, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon such conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude any tax withholding required by law or regulations.

Section 10.05. Company to Provide Stock.

The Company shall, prior to issuance of any Securities hereunder, and from time to time as may be necessary, reserve, out of its authorized but unissued Common Stock a sufficient number of shares of Common Stock to permit the conversion of all outstanding Securities into shares of Common Stock. The shares of Common Stock or other securities issued upon conversion of Securities bearing a Legend as provided in Section 2.06(f) shall bear a legend substantially in the following form:

“THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A

UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (III) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (III) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM THE HOLDER OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.”

The Company covenants that all shares of Common Stock delivered upon conversion of the Securities shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free of any lien or adverse claim.

The Company will endeavor promptly to comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities, if any, and will list or cause to have quoted such shares of Common Stock on each national securities exchange or in the over-the-counter market or such other market on which the Common Stock is then listed or quoted.

Section 10.06. Adjustment of Conversion Price. The conversion price (the “Conversion Price”) initially shall be that price set forth in paragraph 8 of the form of Security attached hereto as Exhibit A-1, but shall be adjusted from time to time by the Company as follows:

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

(b) In case the Company shall issue to all holders of its Common Stock, rights, warrants or options entitling such holders (for a period commencing no earlier than the record date described below and expiring not more than 60 days after such record date) to subscribe for or purchase shares of Common Stock (or securities convertible into Common

Stock) at a price per share less than the Market Price at the record date for the determination of stockholders entitled to receive such rights, warrants or options, the Conversion Price in effect immediately prior thereto shall be adjusted so that the Conversion Price shall equal the price determined by multiplying the Conversion Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding on such record date, plus the number of shares which the aggregate subscription or purchase price for the total number of shares of Common Stock offered by the rights, warrants or options so issued (or the aggregate conversion price of the convertible securities offered by such rights, warrants or options) would purchase at such Market Price, and the denominator of which shall be the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock offered by such rights, warrants or options (or into which the convertible securities so offered by such rights, warrants or options are convertible). Such adjustment shall be made successively whenever any such rights, warrants or options are issued, and shall become effective immediately after such record date. If at the end of the period during which such rights, warrants or options are exercisable not all rights, warrants or options shall have been exercised, the adjusted Conversion Price shall be immediately readjusted to what it would have been upon application of the foregoing adjustment substituting the number of additional shares of Common Stock actually issued (or the number of shares of Common Stock issuable upon conversion of convertible securities actually issued) for the total number of shares of Common Stock offered (or the convertible securities offered).

(c) In case the Company shall distribute to all holders of its Common Stock any shares of Capital Stock of the Company (other than Common Stock) or evidences of its indebtedness, other securities or other assets, or shall distribute to all holders of its Common Stock, rights, warrants or options to subscribe for or purchase any of its securities (excluding (i) rights, options and warrants referred to in Section 10.06(b) above; (ii) those dividends, distributions, subdivisions and combinations referred to in Section 10.06(a) above; and (iii) dividends and distributions paid in cash), then in each such case 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 the date of such distribution by a fraction, the numerator of which shall be the Market Price on the record date mentioned below less the fair market value on such record date (as determined by the Board of Directors of the Company, whose determination shall be conclusive evidence of such fair market value) of the portion of the Capital Stock or evidences of indebtedness, securities or assets so distributed or of such rights, warrants or options, in each case as applicable, to one share of Common Stock, and the denominator of which shall be the Market Price on such record date; *provided* that no adjustment to the Conversion Price or the ability of a Holder of a Security to convert will be made pursuant to this Section 10.06(c) if the Company provides that Holders of Securities will participate in such cash dividend or distribution on an as-converted basis without conversion and *provided further*, that if the numerator of the foregoing fraction is less than \$1.00 (including a negative amount), then in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion, in addition to the Common Stock issuable upon such conversion, the distribution such Holder would have received had such Holder converted its Security immediately prior to the record date for such distribution. Such adjustment shall become effective immediately after the record date for the determination of stockholders entitled to receive such distribution.

(d) In case a tender or exchange offer made by the Company or any Subsidiary of the Company for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended as of the expiration thereof) shall require the payment to common stockholders of consideration per share of Common Stock having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) that as of the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) exceeds the Closing Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, the Conversion Price shall be decreased so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to 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 Closing Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, and

(ii) the denominator of which 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 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) at the Expiration Time and the Closing Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time,

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time. If the Company is obligated to purchase shares pursuant to any such tender 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 that would then be in effect if such tender or exchange offer had not been made.

(e) In case the Company shall declare a cash dividend or distribution to all or substantially all of the holders of Common Stock, the Conversion Price shall be decreased so that the Conversion Price shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the record date for such dividend or distribution by a fraction,

(i) the numerator of which shall be the average of the Closing Prices of the Common Stock price for the three consecutive trading days ending on the date immediately preceding the record date for such dividend or distribution (the "Pre-Dividend Sale Price"), minus the full amount of such cash dividend or distribution applicable to one share of Common Stock, and

(ii) the denominator of which shall be the Pre-Dividend Sale Price,

such adjustment to become effective immediately after the record date for such dividend or distribution; *provided* that no adjustment to the Conversion Price or the ability of a Holder of a Security to convert will be made pursuant to this Section 10.06(e) if the Company provides that Holders of Securities will participate in such cash dividend or distribution on an as-converted basis without conversion and *provided further*, that if the numerator of the foregoing fraction is less than \$1.00 (including a negative amount), then in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion, in addition to the Common Stock issuable upon such conversion, the amount of cash such Holder would have received had such Holder converted its Security immediately prior to the record date for such dividend or distribution. If such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price that would then be in effect if such dividend or distribution had not been declared.

(f) Reserved.

(g) If the rights provided for in the Company's Rights Agreement dated as of May 9, 1996 (the "Stockholder Rights Plan") have separated from the Company's Common Stock in accordance with the provisions of the Stockholder Rights Plan so that the Holders of the Securities would not be entitled to receive any rights in respect of Common Stock issuable upon conversion of the Securities, the Conversion Price will be adjusted as provided in paragraph (c) above, subject to readjustment in the event of the expiration, termination or redemption of the rights. In lieu of any such adjustment, the Company may amend the Stockholder Rights Plan to provide that upon conversion of the Securities the Holders will receive, in addition to Common Stock issuable upon such conversion, the rights which would have attached to such shares of Common Stock if the rights had not become separated from the Common Stock under the Company's Stockholder Rights Plan. To the extent that the Company adopts any future rights plan, upon conversion of the Securities into Common Stock, Securityholders will receive, in addition to Common Stock, the rights under the future rights plan whether or not the rights have separated from the Common Stock at the time of conversion and no adjustment to the Conversion Price will be made in connection with any distribution of rights thereunder.

(h) In case of a tender or exchange offer made by a Person other than the Company or any Subsidiary for an amount that increases the offeror's ownership of Common Stock to more than twenty-five percent (25%) of the Common Stock outstanding and shall involve the payment by such Person of consideration per share of Common Stock having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) as of the Expiration Time tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) that exceeds the Closing Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, and in which, as of the Expiration Time the Board of Directors is not recommending rejection of the offer, the Conversion Price shall be decreased so that the same shall equal the rate determined by multiplying the Conversion Price in effect immediately prior to 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 Closing Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, and

(ii) the denominator of which 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 or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares so accepted up to any such maximum, being referred to as the "Purchase Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Closing Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time,

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time. If such Person is obligated to purchase shares pursuant to any such tender or exchange offer, but such Person 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 that would then be in effect if such tender or exchange offer had not been made. Notwithstanding the foregoing, the adjustment described in this Section 10.06(h) shall not be made if, as of the Expiration Time, the offering documents with respect to such offer disclose a plan or intention to cause the Company to engage in any transaction described in Article 5.

In any case in which this Section 10.06 shall require that an adjustment be made immediately following a record date established for purposes of Section 10.06, the Company may elect to defer (but only until five Business Days following the filing by the Company with the Trustee of the certificate described in Section 10.06) issuing to the holder of any Security converted after such record date the shares of Common Stock and other Capital Stock of the Company issuable upon such conversion over and above the shares of Common Stock and other Capital Stock of the Company issuable upon such conversion only on the basis of the Conversion Price prior to adjustment; and, in lieu of the shares the issuance of which is so deferred, the Company shall issue or cause its transfer agents to issue due bills or other appropriate evidence of the right to receive such shares.

Section 10.07. No Adjustment. No adjustment in the Conversion Price shall be required unless the adjustment would require an increase or decrease of at least 1% in the Conversion Price as last adjusted; provided, however, that any adjustments which by reason of this Section 10.07 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 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 transaction referred to in Section 10.06 if Holders are to participate in the transaction on a basis and with notice that the Board of Directors determines to be fair and appropriate in light of the basis and notice on which holders of Common Stock participate in the transaction. Such participation by Holders may include

participation upon conversion; provided that an adjustment shall be made at such time as the Holders are no longer entitled to participate.

No adjustment need be made for rights to purchase Common Stock or issuances of Common Stock pursuant to a Company plan for reinvestment of dividends or interest.

No adjustment need be made for a change in the par value or a change to no par value of the Common Stock.

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

Section 10.08. Equivalent Adjustments. If, as a result of an adjustment made pursuant to Section 10.06 above, the holder of any Security thereafter surrendered for conversion shall become entitled to receive any shares of Capital Stock of the Company other than shares of its Common Stock, thereafter the Conversion Price of such other shares so receivable upon conversion of any Securities shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this Article 10.

Section 10.09. Adjustment for Tax Purposes. The Company shall be entitled to make such reductions in the Conversion Price, in addition to those required by Section 10.06, as it in its discretion shall determine to be advisable in order that any stock dividends, subdivision of shares, distribution of rights to purchase stock or securities, or a distribution or securities convertible into or exchangeable for stock hereafter made by the Company to its stockholders shall not be taxable.

Section 10.10. Notice of Adjustment. Whenever the Conversion Price is adjusted, or Holders become entitled to other securities or due bills, the Company shall promptly mail to Holders a notice of the adjustment and file with the Trustee an Officers' Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence of the correctness of such adjustment and the Trustee may conclusively assume that, unless and until such certificate is received by it, no such adjustment is required.

Section 10.11. Notice of Certain Transactions. In case:

- (a) the Company shall declare a dividend (or any other distribution) on its Common Stock; or
- (b) the Company shall authorize the granting to the holders of its Common Stock of rights, warrants or options to subscribe for or purchase any share of any class or any other rights, warrants or options; or
- (c) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation, merger, or

share exchange to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

the Company shall cause to be filed with the Trustee and the Conversion Agent and to be mailed to each Holder of Securities at its address appearing on the list provided for in Section 2.05, as promptly as possible but in any event at least ten days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights, warrants or options, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, share exchange, transfer, dissolution, liquidation or winding-up.

Section 10.12. Effect of Reclassification, Consolidation, Merger, Share Exchange or Sale on Conversion Privilege.

If any of the following shall occur, namely: (i) any reclassification or change of 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); (ii) any consolidation, combination, merger or share exchange to which the Company is a party other than a merger in which the Company is the continuing corporation and which does not result in any reclassification of, or change (other than a change in name, or par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination) in, outstanding shares of Common Stock; or (iii) any sale or conveyance of all or substantially all of the assets of the Company, then the Company, or such successor or purchasing corporation, as the case may be, shall, as a condition precedent to such reclassification, change, consolidation, merger, share exchange, sale or conveyance, execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then outstanding shall have the right to convert such Security into the kind and amount of shares of Capital Stock and other securities and property (including cash) receivable upon such reclassification, change, consolidation, merger, share exchange, sale or conveyance by a holder of the number of shares of Common Stock deliverable upon conversion of such Security immediately prior to such reclassification, change, consolidation, merger, share exchange, sale or conveyance. Such supplemental indenture shall provide for adjustments of the Conversion Price which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Price provided for in this Article 10. If, in the case of any such consolidation, merger, share exchange, sale or conveyance, the stock or other securities and property (including cash) receivable thereupon by a holder of

Common Stock includes shares of Capital Stock or other securities and property of a corporation other than the successor or purchasing corporation, as the case may be, in such consolidation, merger, share exchange, 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 Securities as the Board of Directors of the Company shall reasonably consider necessary by reason of the foregoing. The provision of this Section 10.12 shall similarly apply to successive consolidations, mergers, share exchanges, sales or conveyances. Notwithstanding the foregoing, a distribution by the Company to all or substantially all holders of its Common Stock for which an adjustment to the Conversion Price or provision for conversion of the Securities may be made pursuant to Section 10.06 shall not be deemed to be a sale or conveyance of all or substantially all of the assets of the Company for purposes of this Section 10.12.

In the event the Company shall execute a supplemental indenture pursuant to this Section 10.12, the Company shall promptly file with the Trustee an Opinion of Counsel stating that such supplemental indenture is authorized or permitted by this Indenture and an Officers' Certificate briefly stating the reasons therefor, the kind or amount of shares of stock or securities or property (including cash) receivable by Holders of the Securities upon the conversion of their Securities after any such reclassification, change, consolidation, merger, share exchange, sale or conveyance, any adjustment to be made with respect thereto and that all conditions precedent have been complied with.

Section 10.13. Trustee's Disclaimer.

The Trustee has no duty to determine when an adjustment under this Article 10 should be made, how it should be made or what such adjustment should be made, but may accept as conclusive evidence of the correctness of any such adjustment, and shall be protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 10.10. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities, and the Trustee shall not be responsible for the Company's failure to comply with any provisions of this Article 10. Each Conversion Agent (other than the Company or an Affiliate of the Company) shall have the same protection under this Section 10.13 as the Trustee.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 10.12, but may accept as conclusive evidence of the correctness thereof, and shall be protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 10.12.

Section 10.14. Voluntary Reduction.

The Company from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least 20 Trading Days or such longer period as may be required by law and if the reduction is irrevocable during the period; provided that in no event may the Conversion Price be less than the par value of a share of Common Stock.

Section 10.15. Simultaneous Adjustments.

In the event that this Article 10 requires adjustments to the Conversion Price under more than one of Sections 10.06(a) and (c), and the record dates for the distributions giving rise to such adjustments shall occur on the same date, then such adjustments shall be made by applying, first, the provisions of Section 10.06(c), as applicable, and, second, the provisions of Section 10.06(a). If more than one event requiring adjustment pursuant to Section 10.06 shall occur before completing the determination of the Conversion Price for the first event requiring such adjustment, then the Board of Directors (whose determination shall, if made in good faith, be conclusive) shall make such adjustments to the Conversion Price (and the calculation thereof) after giving effect to all such events as shall preserve for Holders the Conversion Price protection provided in Section 10.06.

**ARTICLE 11**

**SUBORDINATION**

Section 11.01. Securities Subordinated to Senior Indebtedness.

The Company covenants and agrees, and each Holder of the Securities, by its acceptance thereof, likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article 11; and each Person holding any Security, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees that the payment of all Obligations on the Securities by the Company shall, to the extent and in the manner herein set forth, be subordinated and junior in right of payment to the prior payment in full in cash or Cash Equivalents of all Obligations on Senior Indebtedness, including, without limitation, the Company's Obligations under the Credit Agreement; that the subordination is for the benefit of, and shall be enforceable directly by, the holders of Senior Indebtedness or their Representative, and that each holder of Senior Indebtedness or their Representative whether now outstanding or hereafter created, incurred, assumed or guaranteed shall be deemed to have acquired Senior Indebtedness in reliance upon the covenants and provisions contained in this Indenture and the Securities.

Section 11.02. Payments to Holders.

No payment shall be made with respect to the Obligations on the Securities (including, but not limited to, the Change in Control Purchase Price with respect to the Securities subject to purchase in accordance with Article 3 as provided in this Indenture), except payments and distributions made by the Trustee as permitted by the first or second paragraph of Section 11.05, if:

- (i) a default in the Obligations due on any Designated Senior Indebtedness occurs and is continuing (or, in the case of Designated Senior Indebtedness for which there is a period of grace, in the event of such a default that continues beyond the period of grace, if any, specified in the instrument or lease evidencing such Designated Senior Indebtedness); or
- (ii) a default, other than a payment default, on any Designated Senior Indebtedness occurs and is continuing that then permits holders of such

Designated Senior Indebtedness to accelerate its maturity and the Trustee receives a notice of the default (a "Payment Blockage Notice") from a Representative or holder of Designated Senior Indebtedness or the Company.

Subject to the provisions of Section 11.05, if the Trustee receives any Payment Blockage Notice pursuant to clause (ii) above, no subsequent Payment Blockage Notice shall be effective for purposes of this Section unless and until at least 365 consecutive days shall have elapsed since the effectiveness of the immediately prior Payment Blockage Notice and all scheduled payments on the Securities that have come due have been paid in full in cash. No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee (unless such default was waived, cured or otherwise ceased to exist for a period of at least 60 consecutive days prior to the date of such subsequent Payment Blockage Notice and thereafter subsequently reoccurred) shall be, or be made, the basis for a subsequent Payment Blockage Notice.

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

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

(b) in the case of a default referred to in clause (ii) above, upon the earlier of (1) the date on which such default is cured or waived or ceases to exist or (2) 179 days after the date on which the applicable Payment Blockage Notice is received, if the maturity of such Designated Senior Indebtedness has not been accelerated, unless this Article 11 otherwise prohibits the payment or distribution at the time of such payment or distribution.

Upon any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the Company (whether voluntary or involuntary) or in bankruptcy, insolvency, receivership or similar proceedings, all amounts due or to become due upon all Senior Indebtedness shall first be paid in full in cash, or other payments satisfactory to the holders of Senior Indebtedness before any payment is made on account of the principal of, premium, if any, or interest (including Contingent Interest and Liquidated Damages, if any) on the Securities (except payments made pursuant to Article 8 from monies deposited with the Trustee pursuant thereto prior to commencement of proceedings for such dissolution, winding-up, liquidation or reorganization); and upon any such dissolution or winding-up or liquidation or reorganization of the Company or bankruptcy, insolvency, receivership or other proceeding, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustee would be entitled, except for the provision of this Article 11, shall (except as aforesaid) be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders of the Securities or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders, or as otherwise required by law or a court order) or their Representative or

Representatives, as their respective interests may appear, to the extent necessary to pay all Senior Indebtedness in full in cash, or other payment satisfactory to the holders of Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness, before any payment or distribution is made to the Holders of the Securities or to the Trustee.

For purposes of this Article 11, the words “cash, property or securities” shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article 11 with respect to the Securities to the payment of all Senior Indebtedness which may at the time be outstanding; provided that (i) the Senior Indebtedness is assumed by the new corporation, if any, resulting from any reorganization or readjustment, and (ii) the rights of the holders of Senior Indebtedness (other than leases which are not assumed by the Company or the new corporation, as the case may be) are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance, transfer or lease of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided for in Article 5 shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 11.02 if such other corporation shall, as a part of such consolidation, merger, conveyance, transfer or lease, comply with the conditions stated in Article 5.

In the event of the acceleration of the Securities because of an Event of Default, no payment or distribution shall be made to the Trustee or any Holder of Securities in respect of the principal of, premium, if any, or interest (including Contingent Interest and Liquidated Damages, if any) on the Securities by the Company (including, but not limited to, the Change in Control Purchase Price with respect to the Securities subject to purchase in accordance with Article 3 as provided in this Indenture), except payments and distributions made by the Trustee as permitted by Section 11.05, until all Senior Indebtedness has been paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness or such acceleration is rescinded in accordance with the terms of this Indenture. If payment of the Securities is accelerated because of an Event of Default, the Company shall promptly notify holders of Senior Indebtedness of such acceleration.

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

payment satisfactory to the holders of Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness.

Nothing in this Section 11.02 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 7.07. This Section 11.02 shall be subject to the further provisions of Section 11.05.

Section 11.03. Subrogation of Securities.

Subject to the payment in full, in cash or other payment satisfactory to the holders of Senior Indebtedness, of all Senior Indebtedness, the rights of the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Indebtedness pursuant to the provisions of this Article 11 (equally and ratably with the holders of all Indebtedness of the Company which by its express terms is subordinated to other indebtedness of the Company to substantially the same extent as the Securities are subordinated and is entitled to like rights of subrogation) to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Indebtedness until the Obligations on the Securities shall be paid in full in cash or other payment satisfactory to the holders of the Securities; and, for the purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article 11, and no payment over pursuant to the provisions of this Article 11, to or for the benefit of the holders of Senior Indebtedness by Holders of the Securities or the Trustee, shall, as between the Company, its creditors other than holders of Senior Indebtedness, and the Holders of the Securities, be deemed to be a payment by the Company to or on account of the Senior Indebtedness; and no payments or distributions of cash, property or securities to or for the benefit of the Holders of the Securities pursuant to the subrogation provisions of this Article 11, which would otherwise have been paid to the holders of Senior Indebtedness shall, as between the Company and its creditors other than Holders of the Securities, be deemed to be a payment by the Company to, or for, the account of the Securities. It is understood that the provisions of this Article 11 are and are intended solely for the purposes of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of the Senior Indebtedness, on the other hand.

Nothing contained in this Article 11 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the Obligations on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of the Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 11 of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article 11, the Trustee, and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such bankruptcy, dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon and all other facts pertinent thereto or to this Article 11.

Section 11.04. Authorization to Effect Subordination.

Each Holder of a Security by the Holder's acceptance thereof authorizes and directs the Trustee on the Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article 11 and appoints the Trustee to act as the Holder's attorney-in-fact for any and all such purposes. If the Trustee does not file a proper proof of claim or proof of debt in the form required in any proceeding referred to in Section 11.03 hereof at least 30 days before the expiration of the time to file such claim, the holders of any Senior Indebtedness or their representatives are hereby authorized to file an appropriate claim for and on behalf of the Holders of the Securities.

Section 11.05. Notice to Trustee.

The Company shall give prompt written notice in the form of an Officers' Certificate to a Responsible Officer of the Trustee and to any Paying Agent of any fact known to the Company which would prohibit the making of any payment of monies to or by the Trustee or any Paying Agent in respect of the Securities pursuant to the provisions of this Article 11. 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 which would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article 11, unless and until a Responsible Officer of the Trustee shall have received written notice thereof at the Corporate Trust Office from the Company (in the form of an Officers' Certificate) or a Representative or a Holder or Holders of Senior Indebtedness or from any trustee thereof; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 7.01, shall be entitled in all respects to assume that no such facts exist; provided that if on a date not less than three Business Days prior to the date upon which by the terms hereof any such monies may become payable for any purpose (including, without limitation, the payment of the principal of, or premium, if any, or interest (including Contingent Interest and Liquidated Damages, if any) on any Security) the Trustee shall not have received, with respect to such monies, the notice provided for in this Section 11.05, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date. Notwithstanding anything in this Article 11 to the contrary, nothing shall prevent any payment by the Trustee to the Holders of monies deposited with it pursuant to Article 8, and any such payment shall not be subject to the provisions of Article 11.

The Trustee, subject to the provisions of Section 7.01, shall be entitled to rely on the delivery to it of a written notice by a Representative or a Person representing himself to be a holder of Senior Indebtedness (or a trustee on behalf of such holder) to establish that such notice has been given by a Representative or a holder of Senior Indebtedness or a trustee on behalf of any such holder or holders. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article 11, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 11, and if such evidence is not furnished the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 11.06. Trustee's Relation to Senior Indebtedness.

The Trustee in its individual capacity shall be entitled to all of the rights set forth in this Article 11 in respect of any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in Section 7.11 or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 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, the Trustee shall not be liable to any holder of Senior Indebtedness or any Representative if it shall pay over or deliver to Holders of Securities, the Company or any other Person money or assets to which any holder of Senior Indebtedness or such Representative shall be entitled by virtue of this Article 11 or otherwise.

Section 11.07. No Impairment of Subordination.

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

Section 11.08. Certain Conversions Deemed Payment.

For the purposes of this Article 11 only, (1) the issuance and delivery of junior securities upon conversion of Securities in accordance with Article 10 shall not be deemed to constitute a payment or distribution on account of the principal of (or premium, if any) or interest (including Contingent Interest and Liquidated Damages, if any) on Securities or on account of the purchase or other acquisition of Securities, and (2) the payment, issuance or delivery of cash

(except in satisfaction of fractional shares pursuant to Section 10.02), property or securities (other than junior securities) upon conversion of a Security shall be deemed to constitute payment on account of the principal of such Security. For the purposes of this Section 11.08, the term “junior securities” means (a) shares of any stock of any class of the Company, or (b) securities of the Company which are subordinated in right of payment to all Senior Indebtedness which may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. Nothing contained in this Article 11 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article 10.

Section 11.09. Article Applicable to Paying Agents.

If at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term “Trustee” as used in this Article shall (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that the first paragraph of Section 11.05 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

Section 11.10. Senior Indebtedness Entitled to Rely.

The holders of Senior Indebtedness (including, without limitation, Designated Senior Indebtedness) shall have the right to rely upon this Article 11, and no amendment or modification of the provisions contained herein shall diminish the rights of such holders unless such holders shall have agreed in writing thereto.

## ARTICLE 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 orally) to the following facsimile numbers:

if to the Company, to:

Griffon Corporation  
100 Jericho Quadrangle  
Jericho, New York 11753  
Attention: Secretary  
Facsimile No.: (516) 822-4824

if to the Trustee, to:

American Stock Transfer & Trust Company  
59 Maiden Lane  
New York, NY 10038  
Attn: Corporate Trust Department  
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 Holder shall be mailed to the Holder, by first-class mail, postage prepaid, at the Holder'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 Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not received by the addressee.

If the Company mails a notice or communication to the Holders, 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.

Holders may communicate pursuant to TIA Section 312(b) with other Holders with respect to their rights under this Indenture or the Securities. 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 or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee:

(a) 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

- (b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

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

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

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

Section 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:

- (a) a statement that each person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;
- (b) 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;
- (c) 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
- (d) 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 Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.07. Rules by Trustee, Paying Agent, Conversion Agent and Registrar.

The Trustee may make reasonable rules for action by or a meeting of Holders. The Registrar, the 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 Securities, no interest (including Contingent Interest or Liquidated Damages, if any), shall accrue for the intervening period.

Section 12.09. Governing Law.

THIS INDENTURE AND EACH NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE 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 Securities or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

Section 12.11. Successors.

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

Section 12.12. Multiple Originals.

This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

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.

GRIFFON CORPORATION

By: /s/ Edward I. Kramer  
Name: Edward I. Kramer  
Title: Vice President, Administration and  
Secretary

AMERICAN STOCK TRANSFER & TRUST  
COMPANY, as Trustee

By: /s/ Herbert J. Lemmer  
Name: Herbert J. Lemmer  
Title: Vice President

{FORM OF FACE OF GLOBAL SECURITY}

[INCLUDE THE FOLLOWING LEGEND ON RESTRICTED SECURITIES:

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (III) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (III) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY SUBSEQUENT PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE FOREGOING LEGEND MAY BE REMOVED FROM THIS SECURITY ON SATISFACTION OF THE CONDITIONS SPECIFIED IN THE INDENTURE.]

THIS SECURITY WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR UNITED STATES FEDERAL INCOME TAX PURPOSES. FOR PURPOSES OF SECTIONS 1273 AND 1275 OF THE INTERNAL REVENUE CODE, THE ISSUE PRICE OF EACH SECURITY IS \$1,000 PER \$1,000 OF PRINCIPAL AMOUNT, THE ISSUE DATE IS JUNE 21, 2004 AND THE COMPARABLE YIELD IS 8.50% PER ANNUM. HOLDERS OF THIS SECURITY MAY OBTAIN INFORMATION REGARDING THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, YIELD TO MATURITY AND THE PROJECTED PAYMENT SCHEDULE FOR THIS SECURITY BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO: GRIFFON CORPORATION, 100 JERICHO QUADRANGLE, JERICHO, NEW YORK 11753, ATTN.: SECRETARY, SUCH INFORMATION TO BE MADE AVAILABLE, BEGINNING NO LATER THAN 10 DAYS AFTER THE ISSUE DATE, PROMPTLY UPON REQUEST.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO GRIFFON CORPORATION (THE "COMPANY") OR ITS AGENT FOR REGISTRATION OF

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

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS TO NOMINEES OF THE DEPOSITORY TRUST COMPANY, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY 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.

GRIFFON CORPORATION

4.0% Contingent Convertible Subordinated Notes Due 2023

No.:

CUSIP:

Issue Date:

Principal Amount:

GRIFFON CORPORATION, a Delaware corporation, promises to pay to Cede & Co. or registered assigns, the principal amount as set forth on Schedule I hereto, on July 18, 2023, subject to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place. This Security is convertible as specified on the other side of this Security.

Interest Payment Dates: January 18 and July 18, commencing July 18, 2004.

Record Dates: January 1 and July 1, commencing July 1, 2004.

Dated:

GRIFFON CORPORATION

By: \_\_\_\_\_

Name:

Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

American Stock Transfer & Trust Company, as Trustee, certifies that this is one of the Securities referred to in the within-mentioned Indenture.

By: \_\_\_\_\_  
Authorized Signatory

Dated:

GRIFFON CORPORATION

4.0% Contingent Convertible Subordinated Notes Due 2023

(1) Interest.

This Security shall accrue interest at an initial rate of 4.0% per annum. The Company promises to pay interest on the Securities in cash semiannually on each January 18 and July 18, commencing July 18, 2004, to Holders of record on the immediately preceding January 1 and July 1, respectively. Interest on the Securities will accrue from the most recent date to which interest has been paid, or if no interest has been paid, from the Issue Date, until the principal amount is paid or duly made available for payment. The Company will pay interest on any overdue principal amount at the interest rate borne by the Securities at the time such interest on the overdue principal amount accrues, compounded semiannually, and it shall pay interest on overdue installments of interest and Liquidated Damages, if any (without regard to any applicable grace period), at the same interest rate, compounded semiannually. Interest (including Contingent Interest and Liquidated Damages, if any) on the Securities will be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Company shall pay additional interest (“Contingent Interest”) to the Holders during any six-month period (a “Contingent Interest Period”) from July 18 to, but excluding, January 18 and from January 18 to, but excluding, July 18, with the initial six-month period commencing July 18, 2010, if the average of the Security Trading Price for the five Trading Days ending on the third Trading Day immediately preceding the first day of the applicable Contingent Interest Period (the “Contingent Interest Average Trading Price”) equals \$1,200 or more. The amount of Contingent Interest payable per \$1,000 principal amount of Securities in respect of any Contingent Interest Period shall equal 0.50% per annum on the Contingent Interest Average Trading Price. The Company will pay Contingent Interest, if any, in the same manner as it will pay interest as described above.

Upon determination that Holders will be entitled to receive Contingent Interest for a Contingent Interest Period, on or prior to the first day of such Contingent Interest Period, the Company shall issue a press release.

(2) Method of Payment.

The Company will pay interest (including Contingent Interest and Liquidated Damages, if any), on this Security to the Person who is the registered Holder of this Security at the close of business on January 1 or July 1, as the case may be, immediately preceding the related interest payment date. Subject to the terms and conditions of the Indenture, the Company will make payments in respect of the Redemption Price, Purchase Price, Change in Control Purchase Price and the principal amount at Stated Maturity, as the case may be, to the Holder who surrenders a Security to a Paying Agent to collect such payments in respect of the Security. 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 pay interest

(including Contingent Interest and Liquidated Damages, if any), the Redemption Price, Purchase Price, Change in Control Purchase Price and the principal amount at Stated Maturity, as the case may be, by check or wire payable in such money; provided, however, that a Holder holding Securities with an aggregate principal amount in excess of \$1,000,000 may request payment by wire transfer in immediately available funds to an account in North America at the election of such Holder. The Company may mail an interest check to the Holder's registered address. Notwithstanding the foregoing, so long as this Security is registered in the name of a Depositary or its nominee, all payments hereon shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(3) Paying Agent, 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 or Registrar without notice, other than notice to the Trustee; provided that the Company will maintain at least one Paying Agent having an office or agency 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 or Registrar.

(4) Indenture.

The Company issued the Securities under an Indenture dated as of June 21, 2004 (the "Indenture"), between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, 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 Securities are subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of those terms.

The Securities are general unsecured obligations of the Company limited to up to \$130,000,000 aggregate principal amount. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

(5) Redemption at the Option of the Company.

No sinking fund is provided for the Securities. Beginning on July 26, 2010 and during the periods thereafter to maturity, the Securities are redeemable as a whole, or from time to time in part, in any integral multiple of \$1,000, at any time at the option of the Company at a Redemption Price equal to 100% of the principal amount, together with accrued but unpaid interest, thereon (including Contingent Interest and Liquidated Damages, if any), up to but not including the Redemption Date; provided that, if the Redemption Date is on or after an interest record date but on or prior to the related interest payment date, interest will be payable to the Holders in whose names the Securities are registered at the close of business on the relevant record date.

(6) Purchase By the Company at the Option of the Holder; Purchase at the Option of the Holder Upon a Change in Control.

Subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase, at the option of the Holder, all or any portion of the Securities held by such Holder, in any integral multiple of \$1,000, on July 18, 2010, July 18, 2013 and July 18, 2018 (each, a "Purchase Date") at a purchase price per Security equal to 100% of the aggregate principal amount of the Security (the "Purchase Price"), together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), thereon, up to but not including the Purchase Date upon delivery of a Purchase Notice containing the information set forth in the Indenture, together with the Securities subject thereto, at any time from the opening of business on the date that is 30 Business Days prior to such Purchase Date until the close of business on the Business Day prior to such Purchase Date, and upon delivery of the Securities to the Paying Agent by the Holder as set forth in the Indenture.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase the Securities held by such Holder after the occurrence of a Change in Control of the Company for a Change in Control Purchase Price equal to 100% of the principal amount thereof plus accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), thereon, up to but not including the Change in Control Purchase Date which Change in Control Purchase Price shall be paid in cash (provided that, if the Change in Control Purchase Date is on or after an interest record date but on or prior to the related interest payment date, accrued but unpaid interest will be payable to the Holders in whose names the Securities are registered at the close of business on the relevant record date). Holders have the right to withdraw any Purchase Notice or Change in Control Purchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If cash sufficient to pay the Purchase Price or Change in Control Purchase Price, as the case may be, and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any), on all Securities or portions thereof to be purchased as of the Purchase Date or the Change in Control Purchase Date, as the case may be, is deposited with the Paying Agent on the Business Day prior to the Purchase Date or the Change in Control Purchase Date, interest (including Contingent Interest and Liquidated Damages, if any), shall cease to accrue on such Securities (or portions thereof) as of such Purchase Date or Change in Control Purchase Date, and the Holder thereof shall have no other rights as such other than the right to receive the Purchase Price or Change in Control Purchase Price, as the case may be, and interest (including Contingent Interest and Liquidated Damages, if any), upon surrender of such Security.

(7) Notice of Redemption.

Notice of redemption pursuant to paragraph 5 of this Security will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price of all Securities (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 (including Contingent Interest and Liquidated Damages, if any) cease to accrue on such Securities or portions thereof. Securities 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.

(8) Conversion.

Subject to the provisions of Article 10 of the Indenture, a Holder of a Security may convert such Security into shares of Common Stock of the Company if any of the conditions specified in paragraphs (a) through (e) of Section 10.01 of the Indenture is satisfied; provided, however, that if such Security is called for redemption, the conversion right will terminate at the close of business on the second Business Day immediately preceding the Redemption Date of such Security (unless the Company shall default in making the redemption payment when due, in which case the conversion right shall terminate at the close of business on the date such Default is cured and such Security is redeemed). The initial conversion price is \$24.13 per share, subject to adjustment under certain circumstances as described in the Indenture (the "Conversion Price"). The number of shares issuable upon conversion of a Security is determined by dividing the principal amount of Securities converted by the Conversion Price in effect on the Conversion Date. In the event of a conversion of a Security, the Company has the option to deliver the Cash Conversion Price to the Holder of the Security surrendered for such conversion as provided in Section 10.02 of the Indenture. Upon conversion, no adjustment for interest (including Contingent Interest and Liquidated Damages, if any), or dividends will be made. No fractional shares will be issued upon conversion; in lieu thereof, an amount will be paid in cash based upon the current market price (as defined in the Indenture) of the Common Stock on the last Trading Day prior to the date of conversion.

To convert a Security, a Holder must (a) complete and sign the conversion notice set forth below and deliver such notice to the Conversion Agent, (b) surrender the Security to the Conversion Agent, (c) furnish appropriate endorsements and transfer documents if required by the Registrar or the Conversion Agent, (d) pay any transfer or similar tax, if required and (e) if the Security is held in book-entry form, complete and deliver to the Depository appropriate instructions pursuant to the Depository's book-entry conversion programs. If a Holder surrenders a Security for conversion between the record date for the payment of an installment of interest and the related interest payment date, the Security must be accompanied by payment of an amount equal to the interest (including Contingent Interest and Liquidated Damages, if any), payable on such interest payment date on the principal amount of the Security or portion thereof then converted; provided, however, that no such payment shall be required if such Security has been called for redemption on a Redemption Date within the period between and including such record date and such interest payment date, or if such Security is surrendered for conversion on the interest payment date. A Holder may convert a portion of a Security equal to \$1,000 or any integral multiple thereof.

A Security in respect of which a Holder has delivered a Purchase Notice or a Change of Control Purchase Notice exercising the option of such Holder to require the Company to repurchase such Security as provided in Section 3.08 or Section 3.09, respectively, of the Indenture may be converted only if such notice of exercise is withdrawn in accordance with the terms of the Indenture.

(9) Denominations; Transfer; Exchange.

The Securities 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 Securities 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 Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities in respect of which a Purchase Notice or a Change in Control Purchase Notice has been given and not withdrawn (except, in the case of a Security to be purchased in part, the portion of the Security not to be purchased) or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

(10) Persons Deemed Owners.

The registered Holder of this Security may be treated as the owner of this Security for all purposes.

(11) Unclaimed Money or Securities.

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 Securities 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.

(12) Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities 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 Securities at the time outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Company and the Trustee may amend the Indenture or the Securities (i) to cure any ambiguity, omission, defect or inconsistency, or make any other change that does not adversely affect the rights of any Holder, (ii) to comply with Article 5 or Section 10.12 of the Indenture, (iii) to make provisions with respect to the conversion right of Holders pursuant to the requirements of Section 10.12 and Section 10.01 of the Indenture, (iv) to evidence and provide for the acceptance of appointment under the Indenture by a successor Trustee, or (v) to comply with the provisions of the TIA or any requirement of the SEC in connection with the qualification of the Indenture under the TIA.

(13) Defaults and Remedies.

Except as set forth in the Indenture, if an Event of Default occurs and is continuing, the Trustee or the Holders of not less than 25% in principal amount of Securities then outstanding may declare all the Securities to be due and payable in the manner, at the time and with the effect provided in the Indenture. Holders of Securities may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee is not obligated to enforce the Indenture or the Securities unless it has received indemnity reasonably satisfactory to it. The Indenture permits, subject to certain limitations therein provided, Holders of a majority in aggregate principal amount of the Securities then outstanding to direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of Securities notice of any continuing Default or Event of Default (except a Default in payment of principal, premium, if any, or interest when due, for any reason, or a Default in compliance with Article 5 of the Indenture) if it determines in good faith that withholding notice is in the interest of Holders.

(14) 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 Securities 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.

(15) No Recourse Against Others.

A director, officer, employee or shareholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

(16) Ranking.

The Securities shall be direct, unsecured subordinated obligations of the Company shall rank pari passu with the Company's 4% Contingent Convertible Subordinated Notes due 2023 and shall and be subject to the provisions regarding subordination contained in Article 11 of the Indenture. The Securities are not guaranteed.

(17) Subordination.

The Securities are subordinated in right of payment, in the manner and to the extent set forth in the Indenture, to the prior payment in full in cash or Cash Equivalents of all Obligations on Senior Indebtedness of the Company, whether outstanding on the date of the Indenture or thereafter created, incurred, assumed or guaranteed. Each Holder by its acceptance hereof agrees to be bound by such provisions and authorizes and expressly directs the Trustee, on its behalf, to take such action as may be necessary or appropriate to effectuate the subordination provided for in the Indenture and appoints the Trustee its attorney-in-fact for such purposes.

(18) Authentication.

This Security 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 Security.

(19) Abbreviations.

Customary abbreviations may be used in the name of a Securityholder 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").

(20) Governing Law.

THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THIS SECURITY.

(21) CUSIP Numbers.

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities as a convenience to the Holders of the Securities. No representation is made as to the accuracy of such numbers as printed on the Securities and reliance may be placed only on the other identification numbers printed hereon.

ASSIGNMENT FORM

To assign this Security, fill in the form below

I or we assign and transfer this Security 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 Security on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_

Signature Guaranteed

\_\_\_\_\_  
Participant in a Recognized Signature  
Guarantee Medallion Program

By: \_\_\_\_\_  
Authorized Signatory

CONVERSION NOTICE

To convert this Security into Common Stock of the Company, check the box

To convert only part of this Security, 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 the other person's soc. sec. tax ID no.)

\_\_\_\_\_  
\_\_\_\_\_

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

Your Signature: \_\_\_\_\_

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

FORM OF PURCHASE NOTICE

To: Griffon Corporation

The undersigned registered holder of this Security requests and instructs the Company to purchase this Security, or the portion hereof (which is \$1,000 principal amount or a multiple thereof) designated below, on the July 18 specified below, in accordance with the terms and conditions specified in paragraph 6 of this Security and the Indenture referred to in this Security and directs that the check in payment for this Security or the portion thereof and any Securities representing the portion of principal amount hereof not to be so purchased, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any portion of this Security not purchased is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.

Dated:

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Signature(s)

Fill in for registration of Securities  
not purchased if to be issued other  
than to and in the name of registered holder:

(Name)

(Street Address)

(City, state and zip code)

Please print name and address

principal amount to be purchased (if less than all): \$ ,000

date of requested purchase: July 18, 20  
(specify either July 18, 2010, 2013 or 2018)

FORM OF OPTION TO ELECT REPURCHASE UPON A CHANGE IN CONTROL

To: Griffon Corporation

The undersigned registered holder of this Security hereby acknowledges receipt of a notice from Griffon Corporation (the "Company") as to the occurrence of a Change In Control with respect to the Company and requests and instructs the Company to repurchase this Security, or the portion hereof (which is \$1,000 principal amount or a multiple thereof) designated below, in accordance with the terms of the Indenture referred to in this Security and directs that the check in payment for this Security or the portion thereof and any Securities representing any unrepurchased principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any portion of this Security not repurchased is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.

Dated:

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Signature(s)

Fill in for registration of Securities not repurchased if to be issued other than to and in the name of registered holder:

(Name)

(Street Address)

(City, state and zip code)

Please print name and address

principal amount to be purchased (if less than all): \$ ,000

SCHEDULE I

GRIFFON CORPORATION  
4.0% Contingent Convertible Subordinated Notes Due 2023

<b>Date</b>	<b>Principal Amount</b>	<b>Notation</b>
<hr/>		
<hr/>		

A-1-15

{Form of Certificated Security}

[INCLUDE THE FOLLOWING LEGEND ON RESTRICTED SECURITIES:

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (III) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (III) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE FOREGOING LEGEND MAY BE REMOVED FROM THIS SECURITY ON SATISFACTION OF THE CONDITIONS SPECIFIED IN THE INDENTURE.]

THIS SECURITY WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR U.S. FEDERAL INCOME TAX PURPOSES. FOR PURPOSES OF SECTIONS 1273 AND 1275 OF THE INTERNAL REVENUE CODE, THE ISSUE PRICE OF EACH SECURITY IS \$1,000 PER \$1,000 OF PRINCIPAL AMOUNT, THE ISSUE DATE IS JUNE 21, 2004 AND THE COMPARABLE YIELD IS 8.50% PER ANNUM. HOLDERS OF THIS SECURITY MAY OBTAIN INFORMATION REGARDING THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, YIELD TO MATURITY AND THE PROJECTED PAYMENT SCHEDULE FOR THIS SECURITY BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO: GRIFFON CORPORATION, 100 JERICHO QUADRANGLE, JERICHO, NEW YORK 11753, ATTN.: SECRETARY, SUCH INFORMATION TO BE MADE AVAILABLE, BEGINNING NO LATER THAN 10 DAYS AFTER THE ISSUE DATE, PROMPTLY UPON REQUEST.

GRIFFON CORPORATION

4.0% Contingent Convertible Subordinated Notes Due 2023

No.:

CUSIP:

Issue Date:

Principal Amount:

GRIFFON CORPORATION, a Delaware corporation, promises to pay to \_\_\_\_\_ or registered assigns, the principal amount of \_\_\_\_\_, on July 18, 2023, subject to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place. This Security is convertible as specified on the other side of this Security.

Interest Payment Dates: January 18 and July 18, commencing July 18, 2004

Record Dates: January 1 and July 1, commencing July 1, 2004

Dated:

GRIFFON CORPORATION

By: \_\_\_\_\_

Name:

Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

American Stock Transfer & Trust Company, as Trustee, certifies that this is one of the Securities referred to in the within-mentioned Indenture.

By: \_\_\_\_\_  
Authorized Signatory

Dated:

{FORM OF REVERSE SIDE IS IDENTICAL TO EXHIBIT A-1}

EXHIBIT B

Transfer Certificate

In connection with any transfer of any of the Securities 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 Security hereby certifies with respect to \$ \_\_\_\_\_ principal amount of the above-captioned Securities presented or surrendered on the date hereof (the "Surrendered Securities") for registration of transfer, or for exchange or conversion where the securities deliverable 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 Securities for the reason checked below:

- A transfer of the Surrendered Securities is made to the Company or any subsidiaries; or
- The transfer of the Surrendered Securities complies with Rule 144A under the U.S. Securities Act of 1933, as amended (the "Securities Act"); or
- The transfer of the Surrendered Securities is pursuant to an effective registration statement under the Securities Act; or
- The transfer of the Surrendered Securities is pursuant to another available exemption from the registration requirement of the Securities Act.

The undersigned confirms that, to the undersigned's knowledge, such Securities are not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act (an "Affiliate").

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.)

Signature Guaranteed

\_\_\_\_\_  
Participant in a Recognized Signature  
Guarantee Medallion Program

By: \_\_\_\_\_  
Authorized Signatory

**Griffon Corporation**  
**100 Jericho Quadrangle**  
**Jericho, New York 11753-2794**  
**(516) 938-5544 \* (516)938-5644**

November 4, 2004

American Stock Transfer & Trust Company  
59 Maiden Lane  
Plaza Level  
New York, NY 10038  
Attn: Corporate Trust Department  
By Certified, First Class Mail and by Facsimile No.: (718) 331-1852

**RE: Griffon Corporation 4.0% Contingent Convertible Subordinated Notes  
due 2023 (Second Series)**

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of June 22, 2004, between American Stock Transfer & Trust Company, as Trustee and Griffon Corporation, a Delaware corporation (the "Company"). Capitalized terms used and not defined herein have the meanings ascribed to them in the Indenture.

Pursuant to Article 10 of the Indenture, if any Securities are properly presented for conversion, the Company may, at its option, instead of delivering shares of Common Stock issuable upon conversion of such Securities, pay the Holder the Cash Conversion Price. The Company hereby irrevocably elects, with respect to each \$1,000 principal amount of Securities tendered for conversion (and not properly withdrawn in accordance with the Indenture), to (a) pay in cash the Cash Election Amount (or such lesser amount, if the Cash Conversion Price with respect to such Securities is less than \$1,000) (the "Cash") and (b) if the Cash Conversion Price is greater than \$1,000, deliver a number of shares of Common Stock (appropriately adjusted to take into account the occurrence, during the applicable five Trading Day period, of any event requiring adjustment of Conversion Price) equal to the quotient obtained by dividing (x) the excess of the Cash Conversion Price over the Cash by (y) the average of the Closing Price of the Common Stock for each Trading Day in the applicable five Trading Day period specified in the Indenture in the definition of "Cash Conversion Price." The Company will deliver the notice of the foregoing election (the "Notice of Election") in accordance with Section

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10.02 of the Indenture to each Holder who tenders any Note for conversion. The "Cash Election Amount" means \$1,000, unless the Company specifies a greater amount in the applicable Notice of Election.

This instrument shall be governed by and construed in accordance with the laws of the State of New York.

Very truly yours,

GRIFFON CORPORATION

/s/ Robert Balemian

Robert Balemian

President

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**Exhibit 23**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 33-39090, 33-62966, 33-52319, 33-57683, 333-21503, 333-62319, 333-84409, 333-67760, 333-88422 and 333-102742) of Griffon Corporation and its subsidiaries of our report dated November 30, 2004 relating to the financial statements and financial statement schedules, which appear in this Form 10-K.

PricewaterhouseCoopers LLP

New York, New York

December 13, 2004

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**Certification**

I, Harvey R. Blau, certify that:

1. I have reviewed this annual report on Form 10-K of Griffon Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 13, 2004

By: /s/ HARVEY R. BLAU  
*Chairman of the Board and  
Chief Executive Officer*

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**Certification**

I, Robert Balemian, certify that:

1. I have reviewed this annual report on Form 10-K of Griffon Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 13, 2004

By: /s/ ROBERT BALEMIAN  
*President and Chief Financial Officer*

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**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Harvey R. Blau, Chief Executive Officer of Griffon Corporation, certify that the Form 10-K of Griffon Corporation for the period ended September 30, 2004, fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Griffon Corporation for the periods presented.

/s/ HARVEY R. BLAU

Name Harvey R. Blau  
Date December 13, 2004

I, Robert Balemian, Chief Financial Officer of Griffon Corporation, certify that the Form 10-K of Griffon Corporation for the period ended September 30, 2004, fully complies with the requirements of Section 13 (a) of the Securities Exchange Act of 1934 and the information contained in such report fairly presents, in all materials respects, the financial condition and results of operations of Griffon Corporation for the periods presented.

/s/ ROBERT BALEMIAN

Name Robert Balemian  
Date December 13, 2004

A signed original of this written statement required by Section 906 has been provided to Griffon Corporation and will be retained by Griffon Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

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