

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 8-K

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

Date of report (Date of earliest event reported) June 17, 1998

Aspen Technology, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware

0-24786

04-2739697

(State or Other Jurisdiction
of Incorporation)

(Commission
File Number)

(IRS Employer
Identification No.)

Ten Canal Park, Cambridge, Massachusetts

02141

(Address of Principal Executive Offices)

(Zip Code)

Registrant's telephone number, including area code (617) 949-1000

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Item 5. Other Events.

On June 17, 1998, Aspen Technology, Inc. (the "Company") completed the sale of \$86,250,000 aggregate principal amount of its 5 1/4% Convertible Subordinated Debentures due June 15, 2005 (the "Debentures"). The Debentures were sold by the Company to Goldman, Sachs, & Co., NationsBanc Montgomery Securities LLC and William Blair & Company, L.L.C. (the "Initial Purchasers"), which offered and sold the Debentures to qualified institutional buyers in reliance on Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). The Company initially offered \$75,000,000 aggregate principal amount of Debentures and sold an additional \$11,250,000 aggregate principal amount of Debentures pursuant to the Initial Purchasers' exercise of an over-allotment option.

The net proceeds received by the Company from the sale of the Debentures, after deducting underwriting commissions (but before deducting expenses of the offering), totalled \$83,231,250. The Company intends to use the net proceeds for working capital and other general corporate purposes. The Company may use a portion of the net proceeds to acquire or invest in one or more new technologies, products or businesses that expand, complement or are otherwise related to the Company's current business and software and service solutions.

The Debentures and the shares of Common Stock issuable upon conversion thereof have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act. The Debentures are eligible for trading in the Private Offerings, Resales and Trading through Automated Linkages (PORTAL) Market of the National Association of Securities Dealers, Inc. The Company has agreed to file a Shelf Registration Statement (as defined below) in respect of the Debentures and the shares of Common Stock issuable upon conversion thereof. See "Registration Rights."

A press release relating to the sale of the Debentures is attached to this Form 8-K, and incorporated herein by reference, in accordance with Rule 135c(d) of the Securities Act.

The Debentures have been issued under an Indenture dated as of June 17, 1998 (the "Indenture") between the Company and The Chase Manhattan Bank, as trustee (the "Trustee"), a copy of which is included as an exhibit to this Form 8-K and is incorporated by reference herein. Wherever particular defined terms of the Indenture (including the Debentures and the various forms thereof) are referred to below, such defined terms are incorporated herein by reference (the Debentures and various terms relating to the Debentures being referred to in the Indenture as "Securities"). The following summaries of certain provisions of the Indenture do not purport to be complete and are subject to, and are qualified in their entirety by reference to, the detailed provisions of the Debentures and the Indenture, including the definitions therein of certain terms. Section references below are references to sections of the Indenture.

GENERAL

The Debentures are unsecured subordinated obligations of the Company, are limited to \$86,250,000 aggregate principal amount, and will mature on June 15, 2005. The Debentures bear interest at the rate of 5 1/4% per annum from June 17, 1998 or from the most recent Interest Payment Date to which interest has been paid or provided for, payable semiannually on June 15 and December 15 of each year, commencing on December 15, 1998. Interest is calculated on the basis of a 360-day year consisting of twelve 30-day months. (Sections 3.1 and 3.10)

The Debentures are convertible into Common Stock initially at a conversion rate of 18.8791 shares per \$1,000 principal amount of Debentures (equivalent to a conversion price of approximately \$52.97 per share), subject to adjustment upon the occurrence of certain events described under "Conversion Rights," at any time following the last original issue date of the Debentures and prior to the close of business on the maturity date, unless previously redeemed or repurchased. (Sections 2.3, 13.1 and 13.4)

The Debentures are redeemable at the option of the Company under the circumstances and at the redemption prices set forth below under "Optional Redemption," plus accrued interest to the redemption date. The Debentures also are subject to repurchase by the Company at the option of the holders as described under "Repurchase at Option of Holders Upon Change of Control."

The Company has agreed to file the Shelf Registration Statement in respect of the Debentures and the shares of Common Stock issuable upon conversion thereof pursuant to the Registration Rights Agreement (as defined below). Upon any failure by the Company to comply with certain of its obligations under the Registration Rights Agreement, additional interest will be payable on the Debentures. See "Registration Rights."

FORM AND DENOMINATION

The Debentures initially are represented by global Debentures in fully registered form without coupons (collectively, the "Global Debentures" and individually, a "Global Debenture") that have been deposited with the Trustee as custodian for The Depository Trust Company ("DTC") and registered in the name of a nominee of DTC. (Section 2.1) The Global Debentures are (and any Debentures issued in exchange therefor will be) subject to certain restrictions on transfer set forth therein and in the Indenture. (Section 2.2)

Except in the limited circumstances described below under "Global Debentures," owners of beneficial interests in Global Debentures are not entitled to receive physical delivery of certificated Debentures. The Debentures are not issuable in bearer form.

The Debentures are issuable only in fully registered form, without exception. The Debentures are issuable in denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. (Section 3.2) No service charge will be made for any registration, transfer or exchange of Debentures, but the Company may require payment of a sum sufficient to cover any tax or other government charge payable in connection therewith. (Section 3.5)

The Company has appointed the Trustee at its Corporate Trust Office as paying agent, transfer agent, registrar and conversion agent for the Debentures. In such capacities, the Trustee is responsible for, among other things, (i) maintaining a record of the aggregate holdings of Debentures represented by the Global Debenture and accepting Debentures for exchange and registration of transfer, (ii) ensuring that payments of principal, premium, if any, and interest in respect of the Debentures received by the Trustee from the Company are duly paid to DTC or its nominees, (iii) transmitting to the Company any notices from holders, (iv) accepting conversion notices and related documents and transmitting the relevant items to the Company, and (v) delivering certificates for Common Stock issued upon conversion of the Debentures.

The Company will cause each transfer agent to act as a registrar and will cause to be kept at the office of each transfer agent a register in which, subject to such reasonable regulations as it may prescribe, the Company will provide for the registration of the Debentures and registration of transfers of the Debentures. (Section 3.5) The Company may vary or terminate the appointment of any paying agent, transfer agent or conversion agent, or appoint additional or other such agents, or approve any change in the office through which any such agent acts, provided that there shall at all times be a paying agent, a transfer agent and a conversion agent in the Borough of Manhattan, The City of New York, New York. The Company will cause notice of any registration, termination or appointment of the Trustee or any paying agent, transfer agent or conversion agent, and of any change in the office through which any such agent will act, to be provided to holders of the Debentures. (Section 11.2)

GLOBAL DEBENTURES

The following description of the operations and procedures of DTC is provided solely as a matter of convenience. These operations and procedures are solely within the control of the respective settlement systems and are subject to changes by them from time to time. The Company takes no responsibility for these operations and procedures and urges investors to contact the system or their participants directly to discuss these matters.

DTC has advised the Company as follows: DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the Uniform Commercial Code, as amended, and a "Clearing Agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for its participating organizations (collectively, "participants") and facilitate the clearance and settlement of securities transactions between participants through electronic book-entry changes in accounts of its participants, thereby eliminating the need for physical transfer and delivery of certificates. Participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include certain other organizations. Indirect access to the DTC system is available to other entities such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly ("indirect participants").

Upon the issuance of any Global Debenture, DTC will credit, on its internal system, the respective principal amount of the individual beneficial interests represented by such Global Debenture to the accounts of DTC participants or persons who hold interests through participants. Ownership of beneficial interests in such Global Debenture will be shown on, and the transfer of that ownership will be effected only through, records maintained by DTC or its nominee (with respect to interests of participants) or by the participants and the indirect participants (with respect to other owners of beneficial interests in the Global Debentures).

As long as DTC or its nominee is the registered holder of a Global Debenture, DTC or such nominee, as the case may be, will be considered the sole owner and holder of the Debentures represented by such Global Debenture for all purposes under the Indenture and the Debentures. Unless DTC notifies the Company that it is unwilling or unable to continue as depository for a Global Debenture, or ceases to be a "Clearing Agency" registered under the Exchange Act, or announces an intention permanently to cease business or does in fact do so, or an Event of Default has occurred and is continuing with respect to a Global Debenture, owners of beneficial interests in a Global Debenture will not be entitled to have any portions of such Global Debenture registered in their names, will not receive or be entitled to receive physical delivery of Debentures in definitive

form and will not be considered the owners or holders of the Global Debenture (or any Debentures represented thereby) under the Indenture or the Debentures. In addition, no beneficial owner of an interest in a Global Debenture will be able to transfer that interest except in accordance with DTC's applicable procedures (in addition to those under the Indenture referred to herein). In the event that owners of beneficial interests in a Global Debenture become entitled to receive Debentures in definitive form, such Debentures will be issued only in registered form in denominations of \$100,000 and integral multiples of \$1,000 in excess thereof.

Except as described under "Transfer, Exchange, and Withdrawal," owners of interests in Global Debentures will not have Debentures registered in their names, will not receive physical delivery of Debentures in certificated form and will not be considered the registered owners or holders thereof under the Indenture for any purpose.

Payments of the principal of and premium, if any, and interest on Global Debentures will be made to DTC or its nominee as the registered owner thereof. The Company expects that DTC or its nominee, upon receipt of any payment of principal, premium or interest in respect of a Global Debenture representing any Debentures held by DTC or its nominee, will immediately credit participants' accounts with payment in amounts proportionate to their respective beneficial interests in the principal amount of such Global Debentures for such Debentures as shown on the records of DTC or its nominee. The Company also expects that payments by participants to owners of beneficial interests in such Global Debentures held through such participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers registered in "street name." Such payments will be the responsibility of such participants. Neither the Company, the Trustee nor any of their respective agents will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the Global Debentures or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Transfers of beneficial interests in the Global Debentures between participants will be effected in accordance with DTC's procedures and will trade in DTC's Same-Day Funds Settlement System, and secondary market trading activity in such interests will therefore settle in immediately available funds.

DTC has advised the Company that it will take any action permitted to be taken by a holder of Debentures (including the presentation of Debentures for exchange as described below) only at the direction of one or more participants to whose account with DTC interests in the Global Debentures are credited and only in respect of such portion of the aggregate principal amount of the Debentures as to which such participant or participants has or have given such direction. However, if there is an Event of Default (as defined below) under the Debentures, DTC reserves the right to exchange the Global Debentures for legended Debentures in certificated form and to distribute such Debentures to its participants.

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of beneficial ownership interests in the Global Debentures among participants of DTC, it is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. None of the Company, the Trustee nor any of their respective agents will have any responsibility for the performance by DTC, its participants or its indirect participants of their respective obligations under the rules and procedures governing DTC's operations, including maintaining, supervising or reviewing the records relating to, or payments made on account of, beneficial ownership interests in Global Debentures.

CERTIFICATED DEBENTURES

If DTC is at any time unwilling or unable to continue as a depository for the reasons set forth above under "Global Debentures," is closed for business for 14 continuous days or announces an intention to cease or permanently ceases business, the Company will issue certificates for the Debentures in definitive, fully registered, non-global form without interest coupons in exchange for each Global Debenture. The holder of a Debenture in non-global form may transfer such Debenture, subject to compliance with the provisions of such legend, by surrendering it at the office or agency maintained by the Company for such purpose in the Borough of Manhattan, The City of New York, New York, which initially will be the office of the Trustee.

Notwithstanding any statement herein, the Company and the Trustee reserve the right to impose such transfer, certification, exchange or other requirements, and to require such restrictive legends on certificates evidencing Debentures, (i) as they may determine are necessary to ensure compliance with the securities laws of the United States and the states and other jurisdictions thereof and any other applicable laws or to ensure that the Shelf Registration Statement, as it may be amended, is declared effective by the Securities and Exchange Commission (the "Commission") or (ii) as DTC may require.

REGISTRATION RIGHTS

The holders of the Debentures and the Common Stock issued upon conversion thereof are entitled to the benefits of a Registration Rights Agreement, dated as of June 17, 1998, between the Company and the Initial Purchasers (the "Registration Rights Agreement"), a copy of which is included as an exhibit to this Form 8-K and is incorporated by reference herein. The following summaries of certain provisions of the Registration Rights Agreement do not purport to be complete and are subject to, and qualified in their entirety by reference to, the detailed provisions of the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the Company has agreed for the benefit of the holders from time to time of the Debentures and the Common Stock issued or issuable upon conversion thereof that it will, at its expense, (i) within 90 days after the first date of issuance of the Debentures, file a registration statement (the "Shelf Registration Statement") with the Commission with respect to resales of the Debentures and the Common Stock issued or issuable upon conversion thereof (together, the "Registrable Securities"), (ii) use its reasonable best efforts to cause the Shelf Registration Statement to be declared effective by the Commission as promptly as practicable but no later than 90 days after the filing of the Shelf Registration Statement, and (iii) subject to certain exceptions, use its reasonable best efforts to maintain such Shelf Registration Statement continuously effective under the Securities Act until (A) the second anniversary of the later of (i) the effective date of the Shelf Registration Statement and (ii) the last original issuance of the Debentures or (B) such earlier date as is provided in the Registration Rights Agreement (the earlier to occur of (A) and (B) being referred to herein as the "Termination Date").

If (i) on or prior to 90 days following the first date of original issuance of the Debentures, the Shelf Registration Statement has not been filed with the Commission, or (ii) on or prior to 90 days following the filing of the Shelf Registration Statement, the Shelf Registration Statement has not been declared effective (each, a "Registration Default"), additional interest ("Liquidated Damages") will accrue on the Debentures from and including the day following such Registration Default to but excluding the day on which such Registration Default has been cured. Liquidated Damages will be paid semi-annually in arrears, with the first semi-annual payment due on the first Interest Payment Date in respect of the Debentures following the date on which such Liquidated Damages begin to accrue, and will accrue at a rate per annum equal to an additional one-quarter of one percent (0.25%) of the principal amount of the Debentures to and including the ninetieth day following such Registration Default and at a rate per annum equal to one-half of one percent (0.50%) thereof from and after the ninety-first day following such Registration Default. In the event that the Shelf Registration Statement ceases to be effective prior to the Termination Date for a period in excess of 60 days, whether or not consecutive, during any 12-month period, then the interest rate borne by the Debentures shall increase by an additional one-half of one percent (0.50%) per annum on the sixty-first day of the applicable 12-month period such Shelf Registration Statement ceases to be effective to but excluding the earlier of the Termination Date or the day on which the Shelf Registration Statement again becomes effective.

The Registration Rights Agreement can be amended by the Company and the holders of a majority in principal amount of Registrable Securities then outstanding.

CONVERSION RIGHTS

The holder of any Debenture has the right, at the holder's option, to convert any portion of the principal amount of a Debenture that is an integral multiple of \$1,000 into shares of Common Stock at any time following the last original issue date of the Debentures and prior to the close of business on the maturity date, unless previously redeemed or repurchased, at a conversion rate (the "Conversion Rate") of 18.8791 shares of Common Stock per \$1,000 principal amount of Debentures (equivalent to a conversion price of approximately \$52.97 per share of Common Stock), subject to adjustment as described below. The right to convert a Debenture called for redemption or delivered for repurchase will terminate at the close of business on the fifth Trading Day preceding the Redemption Date for such Debenture or the second Trading Day preceding the Repurchase Date for such Debenture, as the case may be. (Sections 2.3 and 13.1)

The right of conversion attaching to any Debenture may be exercised by the holder by delivering the Debenture at the specified office of the Conversion Agent, accompanied by a duly signed and completed notice of conversion, a copy of which may be obtained from the Trustee. The conversion date will be the date on which the Debenture and the duly signed and completed notice of conversion are so delivered. As promptly as practicable on or after the conversion date, the Company will issue and deliver to the Trustee a certificate or certificates for the number of whole shares of Common Stock issuable upon conversion, together with payment in lieu of any fraction of a share or, at the Company's option, rounded up to the next whole number of shares; such certificate will be sent by the Trustee to the Conversion Agent (if other than the Trustee) for delivery to the holder. Shares of Common Stock issued upon conversion of the Debentures, in accordance with the provisions of the Indenture, will be fully paid and nonassessable and will rank pari passu with other shares of Common Stock outstanding from time to time. Any Debenture surrendered for conversion during the period from the close of business on any Regular Record Date to the opening of business on the next succeeding Interest Payment Date (the "Record Date Period") (except Debentures surrendered for conversion for which conversion rights would terminate during the Record Date Period as a result of a call for redemption or a repurchase) must be accompanied by payment of an amount equal to the interest payable on such Interest Payment Date relating to such Record Date Period on the principal amount of such Debentures being surrendered for conversion, and the interest payable on such Interest Payment Date in respect of such Debenture (including Debentures surrendered for conversion for which conversion rights would terminate during the Record Date Period as a result of a call for redemption or a repurchase) shall be paid to the holder of such Debenture as of the Regular Record Date. Interest payable in respect of any Debenture surrendered for conversion on or after an Interest Payment Date shall be paid to the holder of such Debenture as of the next preceding Regular Record Date, notwithstanding the exercise of the right of conversion. (Section 13.2)

As a result of the above-described provisions of the Indenture, holders that surrender Debentures for conversion on a date that is not an Interest Payment Date will not receive any interest for the period from the Interest Payment Date next preceding the date of conversion to the date of conversion or for any later period, even if the Debentures are surrendered after a notice of redemption (except for the payment of interest on Debentures called for redemption on a Redemption Date or to be repurchased on a Repurchase Date in either case, the result of which would cause the conversion rights of such Debenture to terminate during the Record Date Period). No other payment or adjustment for interest, or for any dividends in respect of Common Stock, will be made upon conversion. Holders of Common Stock issued upon conversion will not be entitled to receive any dividends payable to holders of Common Stock as of any record time before the close of business on the conversion date. No fractional shares will be issued upon conversion but, in lieu thereof, the Company will calculate an appropriate amount to be paid in cash on the basis set forth in the Indenture or, at its option, round up to the next whole number of shares. (Sections 13.2 and 13.3)

A holder delivering a Debenture for conversion will not be required to pay any taxes or duties in respect of the issue or delivery of Common Stock on conversion but will be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue or delivery of the Common Stock in a name other than that of the holder of the Debenture. Certificates representing shares of Common Stock will not be issued or delivered unless the person requesting such issue has paid to the Company the amount of any such tax or duty or has established to the satisfaction of the Company that such tax or duty has been paid. (Section 13.8)

The Conversion Rate is subject to adjustment in certain events, including, without duplication: (a) dividends (and other distributions) payable in Common Stock on shares of capital stock of the Company, (b) the issuance to all holders of Common Stock of rights, options or warrants entitling them to subscribe for or purchase Common Stock at less than the then-current market price of Common Stock (determined as provided in the Indenture) as of the record date for shareholders entitled to receive such rights, options or warrants, (c) subdivisions, combinations and reclassifications of Common Stock, (d) distributions to all holders of Common Stock of evidences of indebtedness of the Company, shares of capital stock, cash or assets (including securities, but excluding those dividends, rights, options, warrants and distributions referred to above and excluding dividends and distributions paid exclusively in cash and in mergers and consolidations to which the second succeeding clause applies), (e) distributions consisting exclusively of cash (excluding any cash portion of distributions referred to in (d) above or cash distributed upon a merger or consolidation to which the second succeeding paragraph applies) to all holders of Common Stock in an aggregate amount that, combined together with (i) other such all-cash distributions made within the preceding 12 months in respect of which no adjustment has been made and (ii) any cash and the fair market value of other consideration payable in respect of any tender offer by the Company or any of its subsidiaries for Common Stock concluded within the preceding 12 months in respect of which no adjustment has been made, exceeds 10% of the Company's market capitalization (being the product of the then-current market price, determined as provided in the Indenture, per share of the Common Stock and the number of shares of Common Stock then outstanding) on the record date for such distribution, and (f) the successful completion of a tender offer made by the Company or any of its subsidiaries for Common Stock which involves an aggregate consideration that, together with (i) any cash and other consideration payable in a tender offer by the Company or any of its subsidiaries for Common Stock expiring within the 12 months preceding the expiration of such tender offer in respect of which no adjustment has been made and (ii) the aggregate amount of any such all-cash distributions referred to in (e) above to all holders of Common Stock within the 12 months preceding the expiration of such tender offer in respect of which no adjustments have been made, exceeds 10% of the Company's market capitalization on the expiration of such tender offer. The Company may make such increases in the Conversion Rate in addition to those required in the foregoing provisions as it considers to be advisable in order that any event treated for federal income tax purposes as a dividend or distribution of stock or issuance of rights or warrants to purchase or subscribe for stock will not be taxable to the recipients. No adjustment of the Conversion Rate will be required to be made until the cumulative adjustments amount to 1.0% or more of the Conversion Rate. (Section 13.4)

Generally, Holders converting Debentures into Common Stock will be entitled to receive upon such conversion, in addition to the Common Stock into which the Debentures are converted, the associated rights (the "Rights") to purchase Series A Participating Cumulative Preferred Stock of the Company, pursuant to the Rights Agreement dated as of March 12, 1998 between the Company and American Stock Transfer & Trust Company, as Rights Agent, as presently constituted or under any similar plan. If for any reason converting holders of the Debentures are not entitled to receive the Rights that would otherwise be attributable (but for the date of conversion) to the shares of Common Stock received upon such conversion or such Rights are not issued to them upon conversion for any reason, then adjustment of the Conversion Rate shall be made under paragraph (d) of the preceding paragraph as if the Rights were then being distributed to the stockholders. If such an adjustment is made and the Rights are later redeemed, invalidated, or terminated, then a corresponding reversing adjustment shall be made to the Conversion Rate, on an equitable basis, to take account of such event. (Section 13.4)

In case of any consolidation or merger of the Company with or into another Person or any merger of another Person into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of the Common Stock), or in case of any conveyance, sale, transfer or lease of all or substantially all of the assets of the Company, each Debenture then Outstanding will, without the consent of the holder of any Debenture, become convertible only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease by a holder of the number of shares of Common Stock into which such Debenture was convertible immediately prior thereto (assuming such holder of Common Stock failed to exercise any rights of election and that such Debenture was then convertible). (Section 13.11)

The Company from time to time may increase the Conversion Rate by any amount for any period of at least 20 days, in which case the Company shall give at least 15 days' notice of such increase, if the Board of Directors has made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. No such increase shall be taken into account for purposes of determining whether the closing price of the Common Stock exceeds the Conversion Price by 105% in connection with an event that otherwise would constitute a Change of Control. (Section 13.4) See "Repurchase at Option of Holders Upon Change of Control."

SUBORDINATION

The payment of the principal of and premium, if any, and interest on the Debentures (including any amounts payable upon the redemption or repurchase of the Debentures permitted by the Indenture) is subordinated in right of payment, to the extent set forth in the Indenture, to the prior payment in full of the principal of, premium, if any, interest and other amounts in respect of all Senior Debt of the Company. The Debentures also are effectively subordinated in right of payment to all indebtedness and other liabilities of the Company's subsidiaries.

"Senior Debt" is defined in the Indenture to mean the principal of (and premium, if any) and 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 allowable as a claim in any such proceeding) on, and all fees and other amounts payable in connection with, the following, whether direct or indirect, absolute or contingent, secured or unsecured, due or to become due, outstanding on the date of the Indenture or thereafter created, incurred or assumed: (a) indebtedness of the Company for money borrowed or evidenced by credit or loan agreements, bonds, debentures, notes or similar instruments, (b) all obligations of the Company evidenced by a note or similar instrument or written agreement given in connection with the acquisition of any businesses, properties or assets, including securities, (c) obligations of the Company as lessee under leases capitalized on the balance sheet of the lessee under generally accepted accounting principles, (d) obligations of the Company under interest rate and currency swaps, caps, floors, collars, hedge agreements, forward contracts, or similar agreements or arrangements intended to protect the Company against fluctuations in interest or currency exchange rates or commodity prices, (e) all reimbursement obligations of the Company with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of the Company, (f) indebtedness of others of the kinds described in the preceding clauses (a), (b), (c), (d) and (e) that the Company has assumed, guaranteed or otherwise assured the payment thereof, directly or indirectly, and (g) deferrals, renewals, extensions and refundings of, or bonds, debentures, notes or other evidences of indebtedness issued in exchange for, or amendments, modifications or supplements to, or covenants and other obligations of the Company in connection with, the indebtedness described in the preceding clauses (a) through (f), whether or not there is any notice to or consent of the holders of Debentures; except (i) indebtedness and advances among the Company and its direct and indirect subsidiaries; and (ii) any particular indebtedness, deferral, renewal, extension or refunding, if it is expressly stated in the governing terms or in the assumption thereof that the indebtedness involved is not Senior Debt. (Section 1.1)

No payment on account of principal of, premium, if any, or interest on, or redemption or repurchase of, the Debentures may be made if there shall have occurred (i) a default in the payment of the principal, premium, if any, or interest (including a default under any repurchase or redemption obligation) with respect to any Senior Debt or (ii) any other event of default with respect to any Senior Debt that permits the holders thereof to accelerate the maturity thereof, which event of default shall not have been cured or waived or shall not have ceased to exist after written notice of such event of default shall have been given to the Company and the Trustee by any holder of Senior Debt. Upon the acceleration of the principal due on the Debentures or payment or distribution of assets of the Company to creditors upon any dissolution, winding up, liquidation or reorganization, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other proceedings, all principal of and premium, if any, and interest due on all Senior Debt must be paid in full before the holders of the Debentures are entitled to receive any payment. By reason of such subordination, in the event of insolvency, creditors of the Company who are holders of Senior Debt may recover more, ratably, than the

holders of the Debentures, and such subordination may result in a reduction or elimination of payments to the holders of the Debentures. (Sections 14.3 and 14.4)

The Indenture does not limit the Company's ability to incur Senior Debt or any other indebtedness or the ability of any subsidiary of the Company to incur any indebtedness or other liabilities.

OPTIONAL REDEMPTION

The Debentures may not be redeemed prior to June 15, 2001. Thereafter, the Debentures may be redeemed, in whole or in part, at the option of the Company, upon not less than 30 nor more than 60 days' prior notice as provided under "Notices" below, at the redemption prices set forth below, in each case together with accrued interest to the date of redemption. (Section 2.3, Article XII) Such redemption prices (expressed as a percentage of principal amount) are as follows for the 12-month periods beginning on June 15 of each of the following years:

YEAR - - - - -	REDEMPTION PRICE -----
2001.....	103.00%
2002.....	102.25
2003.....	101.50
2004.....	100.75

No sinking fund has been provided for the Debentures.

REPURCHASE AT OPTION OF HOLDERS UPON CHANGE OF CONTROL

If a Change of Control (as defined below) occurs, each holder of Debentures shall have the right, at the holder's option, to require the Company to repurchase all of such holder's Debentures, or any portion of the principal amount thereof that is equal to \$1,000 or an integral multiple of \$1,000 in excess thereof, on the date (the "Repurchase Date") that is 45 days after the date of the Company Notice (as defined), at a price equal to 100% of the principal amount of the Debentures to be repurchased, together with interest accrued to the Repurchase Date (the "Repurchase Price"). (Section 15.1)

The Company may, at its option, in lieu of paying the Repurchase Price in cash, pay the Repurchase Price in Common Stock valued at 95% of the average of the last reported sale price of the Common Stock for the 5 consecutive Trading Days ending on and including the third Trading Day preceding the Repurchase Date; provided that payment may not be made in Common Stock unless the Company satisfies certain conditions prior to the Repurchase Date as provided in the Indenture. (Section 15.2)

Within 30 days after the occurrence of a Change of Control, the Company is obligated to give to all holders of the Debentures notice, as provided in the Indenture (the "Company Notice"), of the occurrence of such Change of Control and of the repurchase right arising as a result thereof. The Company must also deliver a copy of the Company Notice to the Trustee. To exercise the repurchase right, a holder of Debentures must deliver on or before the 30th day after the date of the Company Notice irrevocable written notice to the Trustee of the holder's exercise of such right, together with the Debentures with respect to which the right is being exercised. (Section 15.3)

A "Change of Control" shall be deemed to have occurred at such time after the original issuance of the Debentures as there shall occur:

- (a) the acquisition by any Person (including any syndicate or group deemed to be a "person" under Section 13(d)(3) of the Exchange Act) of beneficial ownership, directly or indirectly, through a purchase, merger, or other acquisition transaction or series of transactions, of shares of capital stock of the Company entitling such Person to exercise 50% or more of the total voting power of all shares of capital stock of the Company entitled to vote generally in elections of directors, other than any such acquisition by the Company, any subsidiary of the Company, or any employee benefit plan of the Company; or

(b) any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company, or any conveyance, sale, transfer or lease of all or substantially all of the assets of the Company to another Person (other than (i) any such transaction (x) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of capital stock of the Company and (y) pursuant to which the holders of the Common Stock immediately prior to such transaction are entitled to exercise, directly or indirectly, 50% or more of the total voting power of all shares of capital stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after such transaction, and (ii) any merger that is effected solely to change the jurisdiction of incorporation of the Company and results in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of common stock);

provided, however, that a Change of Control shall not be deemed to have occurred if the last reported sale price per share of the Common Stock for any 5 Trading Days within the period of 10 consecutive Trading Days ending immediately after the later of the Change of Control or the public announcement of the Change of Control (in the case of a Change of Control under clause (a) above) or ending immediately before the Change of Control (in the case of a Change of Control under clause (b) above) shall equal or exceed 105% of the Conversion Price of the Debentures in effect on each such Trading Day. "Beneficial owner" shall be determined in accordance with Rule 13d-3 under the Exchange Act, as in effect on June 17, 1998. (Section 15.4)

The Company's ability to repurchase Debentures upon the occurrence of a Change of Control is subject to limitations. There can be no assurance that the Company would have the financial resources or be able to arrange financing on acceptable terms, if at all, to pay the Repurchase Price for all the Debentures as to which the purchase right is exercised. Further, a Change of Control would constitute an event of default under the terms of the Company's bank line of credit. Certain of the agreements relating to the Company's current Senior Debt limit the Company's ability to repurchase the Debentures. As a result, any repurchase in connection with a Change of Control would, depending on the circumstances and absent a waiver from the holders of Senior Debt, be blocked by the subordination provisions of the Debentures. See "Subordination." Failure by the Company to repurchase the Debentures when required may result in an Event of Default with respect to the Debentures (and with respect to Senior Debt) whether or not such repurchase is permitted by the subordination provisions. See "Events of Default."

MERGERS AND SALES OF ASSETS BY THE COMPANY

The Company may not consolidate with or merge into any other Person or, directly or indirectly, convey, transfer, sell, lease, or otherwise dispose of its properties and assets substantially as an entirety to any Person (other than a conveyance, sale, transfer, or lease to a wholly owned subsidiary), and the Company may not permit any Person (other than a wholly owned subsidiary) to consolidate with or merge into the Company or convey, transfer, sell, lease, or otherwise dispose of all or substantially all of its properties and assets substantially as an entirety to the Company, unless (a) the Person formed by such consolidation or into which the Company is merged or the Person to which the properties and assets of the Company are so conveyed, transferred, sold, or leased is a corporation, limited liability company, partnership or trust organized and existing under the laws of the United States, any state thereof or the District of Columbia and has expressly assumed the due and punctual payment of the principal of and premium, if any, and interest on the Debentures and the performance of the other covenants of the Company under the Indenture, (b) immediately after giving effect to such transaction, no Event of Default, and no event that, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing, and (c) the Company has provided to the Trustee an Officer's Certificate and opinion of counsel. (Section 8.1)

EVENTS OF DEFAULT

The following constitute Events of Default under the Indenture: (a) failure to pay principal of, premium on, or the Redemption Price or Repurchase Price of any Debenture when due, whether or not such payment is prohibited by the subordination provisions of the Indenture; (b) failure to pay any interest (including Liquidated Damages) on any Debenture when due, continuing for 30 days, whether or not such payment is prohibited by the subordination provisions of the Indenture; (c) failure to provide a Company Notice in the

event of a Change of Control; (d) failure to perform any other covenant or warranty of the Company in the Indenture, continuing for 60 days after written notice as provided in the Indenture; (e) failure to pay any indebtedness for money borrowed by the Company in an aggregate principal amount in excess of \$5,000,000 at final maturity or acceleration of payment thereof, which default in payment or acceleration is not cured or rescinded within 30 days after written notice as provided in the Indenture; and (f) certain events of bankruptcy, insolvency or reorganization. (Section 5.1) Subject to the provisions of the Indenture relating to the duties of the Trustee in case an Event of Default shall occur and be continuing, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the holders, unless such holders shall have offered to the Trustee reasonable security or indemnity. (Section 6.3) Subject to such provisions for the indemnification of the Trustee, the holders of a majority in aggregate principal amount of the Outstanding Debentures will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. (Section 5.12)

If an Event of Default (other than an Event of Default specified in clause (a), (b) or (f) above) occurs and is continuing, either the Trustee shall, at the written request of the holders of not less than 25% in aggregate principal amount of the Outstanding Debentures, or the holders of not less than 25% in aggregate principal amount of the Outstanding Debentures may directly, by notice in writing to the Company, declare the principal of all the Debentures to be due and payable immediately, and upon any such declaration such principal and any accrued interest and any unpaid Liquidated Damages thereon will become immediately due and payable. If an Event of Default specified in clause (a) or (b) occurs and is continuing, the holder of any Outstanding Debenture may, by notice in writing to the Company (with a copy to the Trustee), declare the principal of such Debenture to be due and payable immediately, and upon any such declaration such principal and (subject to the Indenture) any accrued interest and Liquidated Damages thereon will become immediately due and payable. If an Event of Default specified in clause (f) occurs and is continuing, the principal of and any accrued interest and any unpaid Liquidated Damages on all of the then-Outstanding Debentures shall ipso facto become due and payable immediately without any declaration or other Act on the part of the Trustee or any holder. (Section 5.2)

At any time after a declaration of acceleration has been made but before a judgment or decree based on acceleration, the holders of a majority in aggregate principal amount of Outstanding Debentures may, under certain circumstances, rescind and annul such acceleration if, among other things, all Events of Default, other than the nonpayment of accelerated principal and interest, have been cured or waived as provided in the Indenture. (Section 5.2)

No holder of any Debenture has any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless such holder shall have previously given to the Trustee written notice of a continuing Event of Default and unless also the holders of at least 25% in aggregate principal amount of the Outstanding Debentures shall have made written request, and offered reasonable indemnity, to the Trustee to institute such proceeding as trustee, and the Trustee shall not have received from the holders of a majority in aggregate principal amount of the Outstanding Debentures a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days. (Section 5.7) However, such limitations do not apply to a suit instituted by a holder of a Debenture for the enforcement of payment of the principal of or premium, if any, or interest on such Debenture or the Redemption Price or the Repurchase Price on or after the respective due dates expressed in such Debenture or of the right to convert such Debenture in accordance with the Indenture. (Section 5.8)

The Company is required to furnish to the Trustee annually a statement as to the performance by the Company of certain of its obligations under the Indenture and as to any default in such performance. (Section 11.9)

MEETINGS, MODIFICATION, AND WAIVER

The Indenture contains provisions for convening meetings of the holders of Debentures to consider matters affecting their interests. (Article X)

Modifications and amendments of the Indenture may be made, and certain past defaults by the Company may be waived, (i) with the written consent of the holders of not less than a majority in aggregate principal

amount of the Debentures at the time Outstanding or (ii) by the adoption of a Resolution, at a meeting of holders of the Debentures at which a quorum is present, by the holders of at least 66 2/3% in aggregate principal amount of the Outstanding Debentures represented at such meeting. However, no such modification or amendment may, without the consent of the holder of each Outstanding Debenture affected thereby, (a) change the Stated Maturity of the principal of, or any installment of interest on, any Debenture, (b) reduce the principal amount of or the premium, if any, or rate of interest on any Debenture, (c) reduce the amount payable upon redemption or repurchase, (d) modify the provisions with respect to the repurchase right of the holders in a manner adverse to the holders, (e) change the place or currency of payment of principal of or premium, if any, or interest on, any Debenture (including any payment of any Liquidated Damages or the Repurchase Price in respect of such Debenture), (f) impair the right to institute suit for the enforcement of any payment on or with respect to any Debenture, (g) modify the obligation of the Company to maintain an office or agency in The City of New York, New York, (h) except as otherwise permitted by the Indenture or contemplated by provisions concerning consolidation, merger, conveyance, transfer, sale or lease of all or substantially all of the property and assets of the Company, adversely affect the right of holders to convert any of the Debentures or to require the Company to repurchase any Debenture other than as provided in the Indenture, (i) modify the subordination provisions in a manner adverse to the holders of the Debentures, (j) reduce the above-stated percentage of Outstanding Debentures necessary to modify or amend the Indenture, (k) reduce the percentage of aggregate principal amount of Outstanding Debentures necessary for waiver of compliance with certain provisions of the Indenture or for waiver of certain defaults, (l) reduce the percentage in aggregate principal amount of Debentures Outstanding required for the adoption of a Resolution or the quorum required at any meeting of holders of Debentures at which a Resolution is adopted, (m) modify the obligation of the Company to deliver information required by Rule 144A under the Securities Act to permit resales of Debentures and Common Stock issued upon conversion thereof in the event the Company ceases to be subject to certain reporting requirements under United States federal securities laws or (n) modify any provisions relating to subordination of the Debentures, conversion of the Debentures or repurchase upon a Change of Control in a manner adverse to the holders of the Debentures. (Section 9.2) The quorum at any meeting called to adopt a Resolution will be persons holding or representing a majority in aggregate principal amount of the Debentures at the time Outstanding and, at any reconvened meeting adjourned for lack of quorum, 25% of such aggregate principal amount. (Section 10.4)

The holders of a majority in aggregate principal amount of the Outstanding Debentures may waive compliance by the Company with certain restrictive provisions of the Indenture. (Section 11.11) The holders of a majority in aggregate principal amount of the Outstanding Debentures also may waive any past default under the Indenture, except a default in the payment of principal, premium, if any, or interest. (Section 5.13)

TRANSFER, EXCHANGE, AND WITHDRAWAL

The Company has initially appointed the Trustee as security registrar and transfer agent, acting through its Corporate Trust Office in The City of New York, New York. The Company reserves the right to vary or terminate the appointment of the security registrar or of any transfer agent or to appoint additional or other transfer agents or to approve any change in the office through which any security registrar or any transfer agent acts. (Sections 3.5 and 11.2)

In the event of a redemption of the Debentures for any of the reasons set forth above under "Optional Redemption," the Company will not be required (a) to register the transfer or exchange of Debentures for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Debentures called for such redemption or (b) to register the transfer or exchange of any Registered Debenture, or portion thereof, called for redemption. (Section 2.2)

As long as DTC, or its nominee, is the registered holder of a Global Debenture, DTC or such nominee, as the case may be, will be considered the sole owner and holder of the Debentures represented by such Global Debenture for all purposes under the Indenture and the Debentures. Unless DTC notifies the Company that it is unwilling or unable to continue as depository for a Global Debenture, or ceases to be a "Clearing Agency" registered under the Exchange Act, or announces an intention permanently to cease business or does in fact do so, or an Event of Default has occurred and is continuing with respect to a Global Debenture, owners of

beneficial interests in a Global Debenture will not be entitled to have any portions of such Global Debenture registered in their names, will not receive or be entitled to receive physical delivery of Debentures in definitive form and will not be considered the owners or holders of the Global Debenture (or any Debentures represented thereby) under the Indenture or the Debentures. In addition, no beneficial owner of an interest in a Global Debenture will be able to transfer that interest except in accordance with DTC's applicable procedures (in addition to those under the Indenture referred to herein). In the event that owners of beneficial interests in a Global Debenture become entitled to receive Registered Debentures in certificated form, such Debentures will be issued only as Registered Debentures in certificated form in denominations of \$1,000 and integral multiples of \$1,000 in excess thereof.

PURCHASE AND CANCELLATION

The Company or any subsidiary may at any time and from time to time purchase Debentures at any price in the open market or otherwise.

All Debentures surrendered for payment, redemption, repurchase, registration of transfer, exchange or conversion shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee. All Debentures so delivered to the Trustee shall be canceled promptly by the Trustee. No Debentures shall be authenticated in lieu of or in exchange for any Debentures canceled as provided in the Indenture. Unless otherwise requested by the Company and confirmed in writing, the Trustee shall, from time to time but not less than once annually, destroy all canceled Debentures and deliver to the Company a certificate of destruction, which certificate shall specify the number, principal amount and, in the case of Debentures, the form of each canceled Debenture so destroyed. (Section 3.9)

TITLE

The Company and the Trustee may treat the registered owner (as reflected in the Security Register) of any Debenture as the absolute owner thereof (whether or not such Debenture shall be overdue) for the purpose of making payment and for all other purposes.

NOTICES

Notice to holders of the Debentures will be given by mail to the addresses of such holders as they appear in the Security Register. Such notices will be deemed to have been given on the date of such mailing. (Section 1.6)

REPLACEMENT OF DEBENTURES

Debentures that become mutilated, destroyed, stolen or lost will be replaced by the Company at the expense of the holder upon delivery to the Trustee of the mutilated Debentures or evidence of the loss, theft or destruction thereof satisfactory to the Company and the Trustee. In the case of a lost, stolen or destroyed Debenture, indemnity satisfactory to the Trustee and the Company may be required at the expense of the holder of such Debenture before a replacement Debenture will be issued. (Section 3.6)

PAYMENT OF STAMP AND OTHER TAXES

The Company shall pay all stamp and other duties, if any, which may be imposed by the United States or any political subdivision thereof or taxing authority thereof or therein with respect to the issuance of the Debentures. The Company will not be required to make any payment with respect to any other tax, assessment or governmental charge imposed by any government or any political subdivision thereof or taxing authority therein.

SATISFACTION AND DISCHARGE

The Company may discharge its payment obligations under the Indenture while Debentures remain Outstanding if (a) all Outstanding Debentures have become due and payable or will become due and payable at their scheduled maturity within one year, (b) all Outstanding Debentures are scheduled for redemption within one year or (c) all Outstanding Debentures are delivered to the Trustee for conversion in accordance

with the Indenture and in the case of (a) or (b) above, the Company has deposited with the Trustee an amount sufficient to pay and discharge the entire indebtedness on all Outstanding Debentures on the date of their scheduled maturity or the scheduled date of redemption. (Section 4.1)

GOVERNING LAW

The Indenture and the Debentures are governed by and to be construed in accordance with the laws of the State of New York. (Section 1.11)

THE TRUSTEE

In case an Event of Default shall occur (and shall not be cured), the Trustee is required to use the degree of care of a prudent person in the conduct of his own affairs in the exercise of its powers. Subject to such provisions, the Trustee is under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the holders of Debentures, unless they shall have offered to the Trustee reasonable security or indemnity. (Sections 6.1 and 6.3)

ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS.

(a) Financial Statements of Business Acquired.

Not applicable.

(b) Pro Forma Financial Information.

Not applicable.

(c) Exhibits.

EXHIBIT
NUMBER
-----DESCRIPTION

- | | |
|------|--|
| 4.1 | Indenture dated as of June 17, 1998 between Aspen Technology, Inc. and The Chase Manhattan Bank, as trustee, with respect to up to \$86,250,000 principal amount of 5 1/4% Convertible Subordinated Debentures due June 15, 2005 of Aspen Technology, Inc. |
| 4.2 | Form of 5 1/4% Convertible Subordinated Debentures due June 15, 2005 of Aspen Technology, Inc. (included in Sections 2.2, 2.3 and 2.4 of the Indenture filed as Exhibit 4.1). |
| 10.1 | Registration Rights Agreement, dated as of June 17, 1998, between Aspen Technology, Inc. and Goldman, Sachs & Co., Nationsbank Montgomery Securities LLC and William Blair & Company, L.L.C. |
| 99.1 | Press release of Aspen Technology, Inc. issued on June 12, 1998, relating to the sale of the 5 1/4% Convertible Subordinated Debentures due June 15, 2005 of Aspen Technology, Inc. |

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ASPEN TECHNOLOGY, INC.

Date: June 18, 1998

By: /s/ MARY A. PALERMO

Mary A. Palermo
Executive Vice President, Finance and
Chief Financial Officer

EXHIBIT INDEX

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ASPEN TECHNOLOGY, INC.

ISSUER

AND

THE CHASE MANHATTAN BANK

TRUSTEE

INDENTURE

Dated as of June 17, 1998

\$86,250,000

5 1/4 % CONVERTIBLE SUBORDINATED DEBENTURES
DUE JUNE 15, 2005

TABLE OF CONTENTS

	Page ----
RECITALS.	1
ARTICLE I	
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION	
Section 1.1	Definitions. 1
Section 1.2	Compliance Certificates and Opinions.10
Section 1.3	Form of Documents Delivered to the Trustee.11
Section 1.4	Acts of Holders of Securities.12
Section 1.5	Notices, Etc.14
Section 1.6	Notice to Holders of Securities; Waiver.15
Section 1.7	Effect of Headings and Table of Contents.15
Section 1.8	Successors and Assigns.15
Section 1.9	Separability Clause.15
Section 1.10	Benefits of Indenture.15
Section 1.11	Governing Law.16
Section 1.12	Legal Holidays.16
Section 1.13	Conflict with Trust Indenture Act.16
ARTICLE II	
SECURITY FORMS	
Section 2.1	Forms Generally.17
Section 2.2	Form of Face of Security.18
Section 2.3	Form of Reverse of Security.21
Section 2.4	Form of Trustee's Certificate of Authentication.29
ARTICLE III	
THE SECURITIES	
Section 3.1	Title and Terms.29
Section 3.2	Denominations.30
Section 3.3	Execution, Authentication, Delivery and Dating.30
Section 3.4	Temporary Securities.31

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

Section 3.5	Registration, Registration of Transfer and Exchange; Restrictions on Transfer.	31
Section 3.6	Mutilated, Destroyed, Lost or Stolen Securities.	35
Section 3.7	Payment of Interest, Interest Rights Preserved.	36
Section 3.8	Persons Deemed Owners.	37
Section 3.9	Cancellation.	37
Section 3.10	Computation of Interest.	38
Section 3.11	CUSIP Numbers.	38

ARTICLE IV

SATISFACTION AND DISCHARGE

Section 4.1	Satisfaction and Discharge of Indenture.	38
Section 4.2	Application of Trust Money.	40

ARTICLE V

REMEDIES

Section 5.1	Events of Default.	41
Section 5.2	Acceleration of Maturity; Rescission and Annulment.	42
Section 5.3	Collection of Indebtedness and Suits for Enforcement by Trustee.	44
Section 5.4	Trustee May File Proofs of Claim.	45
Section 5.5	Trustee May Enforce Claims Without Possession of Securities.	46
Section 5.6	Application of Money Collected.	46
Section 5.7	Limitation on Suits.	46
Section 5.8	Unconditional Right of Holders to Receive Principal and Interest and to Convert.	47
Section 5.9	Restoration of Rights and Remedies.	48
Section 5.10	Rights and Remedies Cumulative.	48
Section 5.11	Delay or Omission Not Waiver.	48
Section 5.12	Control by Holders of Securities.	48
Section 5.13	Waiver of Past Defaults.	49
Section 5.14	Undertaking for Costs.	49
Section 5.15	Waiver of Stay or Extension Laws.	50

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

ARTICLE VI

THE TRUSTEE

Section 6.1	Certain Duties and Responsibilities.	50
Section 6.2	Notice of Defaults.	51
Section 6.3	Certain Rights of Trustee.	51
Section 6.4	Not Responsible for Recitals or Issuance of Securities.	53
Section 6.5	May Hold Securities, Act as Trustee Under Other Indentures.	53
Section 6.6	Money Held in Trust.	53
Section 6.7	Compensation and Indemnification of Trustee and Its Prior Claims.	53
Section 6.8	Corporate Trustee Required; Eligibility.	55
Section 6.9	Resignation and Removal; Appointment of Successor.	55
Section 6.10	Acceptance of Appointment by Successor.	57
Section 6.11	Merger, Conversion, Consolidation or Succession to Business. ...	57
Section 6.12	Authenticating Agent.	57
Section 6.13	Disqualification; Conflicting Interests.	59

ARTICLE VII

HOLDER'S LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 7.1	COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF HOLDERS.	59
SECTION 7.2	PRESERVATION OF INFORMATION; COMMUNICATIONS TO HOLDERS.	60
SECTION 7.3	REPORTS BY THE COMPANY.	60

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE,
TRANSFER OR LEASE

SECTION 8.1	COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.	61
SECTION 8.2	SUCCESSOR SUBSTITUTED.	62

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

ARTICLE IX

SUPPLEMENTAL INDENTURES

SECTION 9.1	SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS OF SECURITIES.	62
SECTION 9.2	SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS OF SECURITIES. .	63
SECTION 9.3	EXECUTION OF SUPPLEMENTAL INDENTURES.	64
SECTION 9.4	EFFECT OF SUPPLEMENTAL INDENTURES.	65
SECTION 9.5	REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES.....	65
SECTION 9.6	NOTICE OF SUPPLEMENTAL INDENTURES.	65

ARTICLE X

MEETINGS OF HOLDERS OF SECURITIES

SECTION 10.1	PURPOSES FOR WHICH MEETINGS MAY BE CALLED.	65
SECTION 10.2	CALL, NOTICE AND PLACE OF MEETINGS.	66
SECTION 10.3	PERSONS ENTITLED TO VOTE AT MEETINGS.	66
SECTION 10.4	QUORUM; ACTION.	66
SECTION 10.5	DETERMINATION OF VOTING RIGHTS; CONDUCT AND ADJOURNMENT OF. ...	67
SECTION 10.6	COUNTING VOTES AND RECORDING ACTION OF MEETINGS.	68

ARTICLE XI

COVENANTS

SECTION 11.1	PAYMENT OF PRINCIPAL AND INTEREST.	69
SECTION 11.2	MAINTENANCE OF OFFICES OR AGENCIES.	69
SECTION 11.3	MONEY FOR SECURITY PAYMENTS TO BE HELD IN TRUST.	70
SECTION 11.4	CORPORATE EXISTENCE.	71
SECTION 11.5	MAINTENANCE OF PROPERTIES.	71
SECTION 11.6	COMPLIANCE WITH LAWS.	72
SECTION 11.7	PAYMENT OF TAXES AND OTHER CLAIMS.	72
SECTION 11.8	DELIVERY OF CERTAIN INFORMATION.	72
SECTION 11.9	STATEMENT BY OFFICERS AS TO DEFAULT.	73
SECTION 11.10	RESALE OF CERTAIN SECURITIES.	73
SECTION 11.11	WAIVER OF CERTAIN COVENANTS.	73
SECTION 11.12	REGISTRATION RIGHTS.	74

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

SECTION 11.13	BOOK-ENTRY SYSTEM.	75
---------------	-------------------------	----

ARTICLE XII

REDEMPTION OF SECURITIES

SECTION 12.1	RIGHT OF REDEMPTION.	75
SECTION 12.2	APPLICABILITY OF ARTICLE.	75
SECTION 12.3	ELECTION TO REDEEM; NOTICE TO TRUSTEE.	75
SECTION 12.4	SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED.	76
SECTION 12.5	NOTICE OF REDEMPTION.	76
SECTION 12.6	DEPOSIT OF REDEMPTION PRICE.	77
SECTION 12.7	SECURITIES PAYABLE ON REDEMPTION DATE.	78

ARTICLE XIII

CONVERSION OF SECURITIES

SECTION 13.1	CONVERSION PRIVILEGE AND CONVERSION RATE.	78
SECTION 13.2	EXERCISE OF CONVERSION PRIVILEGE.	79
SECTION 13.3	FRACTIONS OF SHARES OF COMMON STOCK.	81
SECTION 13.4	ADJUSTMENT OF CONVERSION RATE.	81
SECTION 13.5	NOTICE OF ADJUSTMENTS OF CONVERSION RATE.	87
SECTION 13.6	NOTICE OF CERTAIN CORPORATE ACTION.	88
SECTION 13.7	COMPANY TO RESERVE COMMON STOCK.	89
SECTION 13.8	TAXES ON CONVERSIONS.	89
SECTION 13.9	COVENANT AS TO COMMON STOCK.	89
SECTION 13.10	CANCELLATION OF CONVERTED SECURITIES.	89
SECTION 13.11	PROVISION IN CASE OF CONSOLIDATION, MERGER OR CONVEYANCE OF ASSETS.	90
SECTION 13.12	RESPONSIBILITY OF TRUSTEE FOR CONVERSION PROVISIONS.	91

ARTICLE XIV

SUBORDINATION

SECTION 14.1	SECURITIES SUBORDINATE TO SENIOR DEBT.	91
SECTION 14.2	PAYMENT OVER OF PROCEEDS UPON DISSOLUTION, ETC.	92
SECTION 14.3	NO PAYMENT WHEN SENIOR DEBT IN DEFAULT.	93

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

	Page

SECTION 14.4	PAYMENT PERMITTED IF NO DEFAULT.94
SECTION 14.5	SUBROGATION TO RIGHTS OF HOLDERS OF SENIOR DEBT.94
SECTION 14.6	PROVISIONS SOLELY TO DEFINE RELATIVE RIGHTS.94
SECTION 14.7	TRUSTEE TO EFFECTUATE SUBORDINATION.95
SECTION 14.8	NO WAIVER OF SUBORDINATION PROVISIONS.95
SECTION 14.9	NOTICE TO TRUSTEE.96
SECTION 14.10	RELIANCE ON JUDICIAL ORDER OR CERTIFICATE OF LIQUIDATING AGENT.96
SECTION 14.11	TRUSTEE NOT FIDUCIARY FOR HOLDERS OF SENIOR DEBT.97
SECTION 14.12	RIGHTS OF TRUSTEE AS HOLDER OF SENIOR DEBT; PRESERVATION OF TRUSTEE'S RIGHTS.97
SECTION 14.13	ARTICLE APPLICABLE TO PAYING AGENTS.97
SECTION 14.14	PAYMENT.98

ARTICLE XV

REPURCHASE OF SECURITIES AT THE OPTION OF THE HOLDER UPON A CHANGE OF CONTROL

SECTION 15.1	RIGHT TO REQUIRE REPURCHASE.98
SECTION 15.2	CONDITIONS TO THE COMPANY'S ELECTION TO PAY THE REPURCHASE PRICE IN COMMON STOCK.99
SECTION 15.3	NOTICES; METHOD OF EXERCISING REPURCHASE RIGHT, ETC.100
SECTION 15.4	CERTAIN DEFINITIONS.103

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

INDENTURE, dated as of June 17, 1998, between ASPEN TECHNOLOGY, INC., a Delaware corporation (herein called the "Company"), and THE CHASE MANHATTAN BANK, a New York banking corporation, as Trustee hereunder (herein called the "Trustee").

RECITALS

The Company has duly authorized the creation of an issue of its 5 1/4% Convertible Subordinated Debentures due June 15, 2005 (herein called the "Securities") of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Securities, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company, and to make this Indenture a valid agreement of the Company in accordance with their and its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.1 DEFINITIONS.

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

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

(2) unless the context otherwise requires, any reference to an "Article" or a "Section," or to an "Annex," refers to an Article or Section of, or an Annex attached to, this Indenture, as the case may be;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States prevailing at the time of any relevant computation hereunder; and

(4) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; PROVIDED, HOWEVER, that where such words are used in any form of Security, form of notice or form of certificate, such words shall refer only to the particular form of Security, form of notice or form of certificate, as the case may be, in which such words are contained.

"Act," when used with respect to any Holder of a Security, has the meaning specified in Section 1.4.

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

"Agent Member" has the meaning specified in Section 3.5.

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

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 6.12 to act on behalf of the Trustee to authenticate Securities.

"Authorized Newspaper" means a newspaper in the English language, customarily published on each Business Day, whether or not published on Saturdays, Sundays or holidays, and of general circulation in the place in connection with which the term is used or in the financial community of such place.

"Board of Directors" means the board of directors of the Company, or any committee of the board of directors of the Company, empowered to act for the Company, as the case may be, with respect to this Indenture.

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

"Business Day" means, with respect to any particular place of payment, place of conversion or any other place, as the case may be, each Monday, Tuesday, Wednesday, Thursday and Friday, other than any such day on which banking institutions in The City of New York, New York or in such particular place are authorized or obligated by law or executive order to close. If any day on which any delivery, request, surrender, payment or other action is required or permitted hereunder to be taken by or on behalf of a Holder is not a Business Day in any place where such action is permitted hereunder to be taken, then such actions may be taken at such or any other permitted place on the next succeeding Business Day at such place with the same force and effect as if taken at the same time on such day that is not a business day at such place.

"Change of Control" has the meaning specified in Section 15.4.

"Closing Price Per Share" means, with respect to the Common Stock of the Company, for any day, the reported last sales price regular way per share on such day or, in case no such reported sale takes place on such day, the average of the reported closing bid and asked prices regular way, in either case (i) on the principal (as determined by the Company's Board of Directors) national securities exchange on which the Common Stock is listed or admitted to trading or (ii) if not listed or admitted to trading on any national securities exchange, on the Nasdaq National Market or (iii) if the Common Stock is not listed or admitted to trading on any national securities exchange or quoted on such National Market, the average of the closing bid and asked prices in the over-the-counter market as furnished by any New York Stock Exchange member firm selected from time to time by the Company for that purpose.

"Code" means the United States Internal Revenue Code of 1986, as amended.

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

"Common Stock" means the Common Stock, par value \$.10 per share, of the Company authorized at the date of this instrument as originally executed. Subject to the provisions of Section 13.11, shares issuable on conversion or repurchase of Securities shall include only shares of Common Stock or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; provided, however, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Securities shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all

such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

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

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by any one of its Chairman of the Board, its Chief Executive Officer, its President, or any Vice President, and by any one of its Chief Financial Officer, Treasurer, any Assistant Treasurer, its Secretary or any Assistant Secretary, and delivered to the Trustee.

"Constituent Person" has the meaning specified in Section 13.11.

"Conversion Agent" means any Person authorized by the Company to convert Securities in accordance with Article XIII. The Company has initially appointed the Trustee as Conversion Agent.

"Conversion Price" and "Conversion Rate" have the meanings specified in Section 13.1 hereof, as adjusted in accordance with Section 13.4.

"Conversion Securities" means the securities delivered on conversion of Securities (or any securities successor thereto), together with any securities successor thereto to those so delivered on conversions.

"Corporate Trust Office" means the office of the Trustee or its agent at which the trust created under this Indenture shall be administered (which at the date of this Indenture is located at The Chase Manhattan Bank, 450 West 33rd Street, 15th Floor, New York, New York 10001 Attention: Corporate Trust Department).

"Corporation" means a corporation, association, company, joint-stock company or business trust.

"Defaulted Interest" has the meaning specified in Section 3.7.

"Depositary" means DTC until a successor depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean such successor Depositary.

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

"DTC" means The Depository Trust Company, a New York corporation.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, including any successor or amendatory statutes.

"Event of Default" has the meaning specified in Section 5.1.

"Exchange Act" means the U.S. Securities Exchange Act of 1934 (including any successor act thereto), as it may be amended from time to time, and (unless the context otherwise requires) includes the rules and regulations of the Commission promulgated thereunder.

"Expiration Date" has the meaning specified in Section 1.4(g).

"Global Security" has the meaning specified in Section 2.1.

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

"Indebtedness" means obligations (other than nonrecourse obligations) of, or guaranteed or assumed by, the Company for borrowed money, including obligations evidenced by bonds, debentures, notes or other similar instruments and reimbursement and cash collateralization of letters of credit, bankers' acceptances, interest rate hedge and currency hedge agreements.

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof including, for all purposes of this instrument and any such supplemental indenture, the Annexes attached to this instrument.

"Initial Purchasers" means Goldman, Sachs & Co., NationsBanc Montgomery Securities LLC and William Blair & Company, L.L.C.

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

"Liquidated Damages" has the meaning specified in Section 11.12.

"Maturity," when used with respect to any Security, means the date on which the principal of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, exercise of the repurchase right set forth in Article XV or otherwise.

"Non-Electing Share" has the meaning specified in Section 13.11.

"Notice of Default" has the meaning specified in Section 5.1.

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

"Officers' Certificate" means a written certificate signed by any one of the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer or any Vice President of the Company and by any one of the Treasurer, the Controller, an Assistant Treasurer, an Assistant Controller, the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee; PROVIDED, HOWEVER, that, for purposes of Section 11.9, an "Officers' Certificate" means a written certificate signed by the principal executive, financial or accounting officer of the Company and any one of the other Officers referred to above and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company and any other counsel who in either case shall be reasonably acceptable to the Trustee.

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

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

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

(iii) Securities which have been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that

such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company;

PROVIDED, HOWEVER, that in determining whether the Holders of the requisite principal amount of Outstanding Securities are present at a meeting of Holders of Securities for quorum purposes or have given 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 conclusively relying upon any such determination as to the presence of a quorum or 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. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

"Paying Agent" means any Person authorized by the Company to pay the principal of or interest on any Securities on behalf of the Company.

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

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"Qualified Institutional Buyer" has the meaning specified in Rule 144A.

"Record Date" means any Regular Record Date or Special Record Date.

"Record Date Period" means the period from the close of business on any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date.

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

"Registered Security" means any Security issued in substantially the form set forth in Section 2.2 and registered in the Security Register. A Global Security is a Registered Security.

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

"Registration Default" has the meaning specified in Section 11.12.

"Registration Rights Agreement" has the meaning specified in Section 11.12.

"Regular Record Date" for interest payable in respect of any Security on any Interest Payment Date means the June 1 or December 1 (whether or not a Business Day) next preceding the relevant Interest Payment Date.

"Repurchase Date" has the meaning specified in Section 15.1.

"Repurchase Price" has the meaning specified in Section 15.1.

"Responsible Officer," when used with respect to the Trustee, shall mean any officer of the Trustee within the Corporate Trust and Agency Division of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer's knowledge and familiarity with the particular subject.

"Restricted Securities" has the meaning specified in Section 2.1.

"Rule 144" means Rule 144 under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

"Rule 144A" means Rule 144A under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

"Rule 144A Information" has the meaning specified in Section 11.8.

"Securities" has the meaning ascribed to it in the first paragraph under the caption "Recitals."

"Securities Act" means the Securities Act of 1933 (including any successor act thereto), as it may be amended from time to time, and (unless the context otherwise requires) includes the rules and regulations of the Commission promulgated thereunder.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 3.5.

"Senior Debt" means the principal of (and premium, if any) and 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 allowable as a claim in any such proceeding) on, and all fees and other amounts payable in connection with, the following, whether direct or indirect, absolute or contingent, secured or unsecured, due or to become due, outstanding on the date of this Indenture or thereafter created, incurred or assumed: (a) indebtedness of the Company for money borrowed or evidenced by credit or loan agreements, bonds, debentures, notes or similar instruments, (b) all obligations of the Company evidenced by a note or similar instrument or written agreement given in connection with the acquisition of any businesses, properties or assets, including securities, (c) obligations of the Company as lessee under leases capitalized on the balance sheet of the lessee under generally accepted accounting principles, (d) obligations of the Company under interest rate and currency swaps, caps, floors, collars, hedge agreements, forward contracts, or similar agreements or arrangements intended to protect the Company against fluctuations in interest or currency exchange rates or commodity prices, (e) all reimbursement obligations of the Company with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of the Company, (f) indebtedness of others of the kinds described in the preceding clauses (a), (b), (c), (d) and (e) that the Company has assumed, guaranteed or otherwise assured the payment thereof, directly or indirectly, and/or (g) deferrals, renewals, extensions and refundings of, or bonds, debentures, notes or other evidences of indebtedness issued in exchange for, or amendments, modifications or supplements to, or covenants and other obligations of the Company in connection with, the indebtedness described in the preceding clauses (a) through (f), whether or not there is any notice to or consent of the Holders of the Securities; except (i) indebtedness and advances among the Company and its Subsidiaries; and (ii) any particular indebtedness, deferral, renewal, extension or refunding, if it is expressly stated in the governing terms or in the assumption thereof that the indebtedness involved is not Senior Debt.

"Shelf Registration Statement" has the meaning specified in Section 11.12.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.7.

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

"Subsidiary" means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, "voting stock" means stock or other similar interests which ordinarily has or have voting power for the election of directors, or persons performing similar functions, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

"Trading Days" means (i) if the Common Stock is listed or admitted for trading on any national securities exchange, days on which such national securities exchange is open for business or (ii) if the Common Stock is not listed or admitted for trading on any national securities exchange, days on which trades may be made on the Nasdaq National Market or any similar system of automated dissemination of quotations of securities prices on which the Common Stock is quoted or (iii) if the Common Stock is not listed or admitted to trading on any national securities exchange or quoted on such National Market or similar system, days on which the Common Stock is traded regular way in the over-the-counter market and for which a closing bid and a closing asked price for the Common Stock is available.

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

"Trust Indenture Act" means the United States Trust Indenture Act of 1939 (including any successor act thereto), as it may be amended from time to time, and (unless the context otherwise requires) includes the rules and regulations of the Commission thereunder.

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

SECTION 1.2 COMPLIANCE CERTIFICATES AND OPINIONS

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

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

- (1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such Person, such Person has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether, in the opinion of such Person, such condition or covenant has been complied with.

SECTION 1.3 FORM OF DOCUMENTS DELIVERED TO THE TRUSTEE.

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

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

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments

under this Indenture, they may, but need not, be consolidated and form one instrument.

SECTION 1.4 ACTS OF HOLDERS OF SECURITIES.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by (1) one or more instruments of substantially similar tenor signed by such Holders in person or by agent or proxy duly appointed in writing, (2) the record of Holders of Securities voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities duly called and held in accordance with the provisions of Article X or (3) a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders of Securities signing such instrument or instruments and so voting at such meeting. Proof of execution of any such instrument or of a writing appointing any such agent or proxy, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 6.1) conclusive in favor of the Trustee and the Company if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 10.6.

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

(c) The ownership of Securities shall be proven by the Security Register.

(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) The Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to give, make or take any

request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities, PROVIDED that the Company may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in the next paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; PROVIDED that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(f) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(2) or (iv) any direction referred to in Section 5.12. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; PROVIDED that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action (whereupon the record date previously set shall automatically and without any action by any Person be canceled and of no effect), nor shall anything in this paragraph be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(g) With respect to any record date set pursuant to this Section, the party hereto that sets such record date may designate any day as the "Expiration Date" and from time to time may change the Expiration Date to any earlier or later day, PROVIDED that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities in the manner set forth in Section 1.6, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section, the party hereto that set such record date shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.

Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

SECTION 1.5 NOTICES, ETC.

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

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

(2) the Company by the Trustee or by any Holder of Securities shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing, mailed, first-class postage prepaid, or telecopied and confirmed by mail, first-class postage prepaid, or delivered by hand or overnight courier, addressed to the Company at Ten Canal Park, Cambridge, Massachusetts 02141, telephone no.: (617) 577-0310; telecopy no.: (617) 577-0722, Attention: Chief Financial Officer, cc: General Counsel, or at any other address previously furnished in writing to the Trustee by the Company.

Any request, demand, authorization, direction, notice, consent, election or waiver required or permitted under this Indenture shall be in the English language, except that any published notice may be in an official language of the country of publication.

SECTION 1.6 NOTICE TO HOLDERS OF SECURITIES; WAIVER.

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

Such notice shall be deemed to have been given when such notice is mailed.

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

SECTION 1.7 EFFECT OF HEADINGS AND TABLE OF CONTENTS.

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

SECTION 1.8 SUCCESSORS AND ASSIGNS.

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

SECTION 1.9 SEPARABILITY CLAUSE.

In case any provision in this Indenture or 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 1.10 BENEFITS OF INDENTURE.

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns hereunder, the holders of Senior Debt of the Company and the Holders of Securities and, solely with respect to this Article I and Sections 11.8, 13.8, and 13.9, the holders of

Conversion Securities, any benefit or legal or equitable right, remedy or claim under this Indenture.

This Article I and Sections 11.8, 13.8 and 13.9 shall not be amended or modified, and neither compliance by the Company with, nor any default by it under, such Article or any such Sections, shall be waived, in any manner that adversely affects the interest of any holder of a Conversion Security at the time outstanding without such holder's consent.

SECTION 1.11 GOVERNING LAW.

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SECTION 1.12 LEGAL HOLIDAYS.

In any case where any Interest Payment Date, Redemption Date, Repurchase Date or Stated Maturity of any Security or the last day on which a Holder of a Security has a right to convert his Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or of the Securities) payment of principal of, premium, if any, or interest (including Liquidated Damages) on, or the payment of the Redemption Price or the Repurchase Price (whether the same is payable in cash or in shares of Common Stock) with respect to, or delivery for conversion of, such Security need not be made on or by such day, but may be made on or by the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date, Redemption Date, Repurchase Date, or at the Stated Maturity or by such last day for conversion, as the case may be; PROVIDED, HOWEVER, that in the case that payment is made on such succeeding Business Day, no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date, Repurchase Date, Stated Maturity or last day for conversion, as the case may be.

SECTION 1.13 CONFLICT WITH TRUST INDENTURE ACT.

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture (or would be required to be a part of and govern this Indenture if this Indenture were required to be qualified under the Trust Indenture Act), the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

ARTICLE II

SECURITY FORMS

SECTION 2.1 FORMS GENERALLY.

The Securities shall be in substantially the forms set forth in this Article, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depository thereof, the Code and regulations thereunder, or as may, consistently herewith, be determined by the Officers executing such Securities, as evidenced by their execution thereof. The Company shall approve the form of the Securities and any notation, legend or endorsement on the Securities.

Any definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed or quoted, as the case may be, all as determined by the Officers executing such Securities as evidenced by their execution thereof.

In certain cases described elsewhere herein, the legends set forth in Section 2.2 may be omitted from Securities issued hereunder.

Securities offered and sold in their initial distribution in reliance on Rule 144A shall initially be issued in the form of one or more Global Securities (collectively, the "Global Security") in fully registered form without interest coupons, substantially in the form of Security set forth in Sections 2.2 and 2.3, with such applicable legends as are provided for in Section 2.2, except as otherwise permitted herein. Such Global Security shall be registered in the name of a nominee of the Depository and deposited with the Trustee, at its New York office, as custodian for the Depository, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Global Security and all other Securities evidencing the debt, or any portion of the debt, initially evidenced by such Global Security, shall collectively be referred to herein as the "Restricted Securities."

The Securities will be issued only in registered form. The Securities will be issued in denominations of \$1,000 and in integral multiples of \$1,000 in excess thereof, as provided in Section 3.2.

SECTION 2.2 FORM OF FACE OF SECURITY.

THIS DEBENTURE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS DEBENTURE AND ANY SHARES OF COMMON STOCK ISSUED UPON ITS CONVERSION MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. THIS DEBENTURE MAY ONLY BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED IN ACCORDANCE WITH THE INDENTURE, COPIES OF WHICH ARE AVAILABLE FOR INSPECTION AT THE CORPORATE TRUST OFFICE OF THE TRUSTEE. EACH PURCHASER OF THIS DEBENTURE IS HEREBY NOTIFIED THAT THE SELLER OF THIS DEBENTURE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER HEREOF, BY PURCHASING THIS DEBENTURE, AGREES FOR THE BENEFIT OF ASPEN TECHNOLOGY, INC. THAT (A) THIS DEBENTURE AND ANY SHARES OF COMMON STOCK ISSUED UPON ITS CONVERSION MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (I) TO A PERSON THAT THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) ACQUIRING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (II) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (III) TO AN INSTITUTION THAT IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501 (a) (1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, (IV) PURSUANT TO THE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER OR (V) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, AND IN EACH OF CASES (I) THROUGH (V) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF THE STATES AND OTHER JURISDICTIONS OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER, PLEDGEE OR TRANSFEREE FROM IT OF THIS DEBENTURE OR ANY COMMON STOCK ISSUED UPON ITS CONVERSION OF THE FOREGOING RESTRICTIONS.

THIS DEBENTURE, ANY SHARES OF COMMON STOCK ISSUED UPON ITS CONVERSION AND ANY RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON

RESALES, PLEDGES AND OTHER TRANSFERS OF THIS DEBENTURE AND ANY SUCH SHARES TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATIONS (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE RESALE, PLEDGE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. THE HOLDER OF THIS DEBENTURE AND ANY SUCH SHARES SHALL BE DEEMED BY THE ACCEPTANCE OF THIS DEBENTURE OR ANY SUCH SHARES TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT.

CONVERSION OF THIS DEBENTURE IS SUBJECT TO CERTIFICATION AND OTHER REQUIREMENTS, AND ANY SHARES OF COMMON STOCK ISSUED ON SUCH CONVERSION WILL BE SUBJECT TO THE FOREGOING TRANSFER RESTRICTIONS.

ASPEN TECHNOLOGY, INC.
5 1/4% CONVERTIBLE SUBORDINATED DEBENTURES
DUE JUNE 15, 2005

No. _____
CUSIP No.

\$

ASPEN TECHNOLOGY, INC., a Delaware corporation (herein called the "Company," which term includes any successor Person under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to _____, or registered assigns, the principal sum of _____ U.S. Dollars, [IF THIS SECURITY IS A GLOBAL SECURITY, THEN INSERT -- (which principal amount may from time to time be increased or decreased to such other principal amounts (which, taken together with the principal amounts of all other Outstanding Securities, shall not exceed \$86,250,000 in the aggregate at any time) by adjustments made on the records of the Trustee hereinafter referred to in accordance with the Indenture)] on June 15, 2005, and to pay interest thereon from June 17, 1998 or from the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, semi-annually in arrears on June 15 and December 15 in each year, commencing on December 15, 1998, and at Maturity at the rate of 5 1/4% per annum, until the principal hereof is paid or made available for payment, PROVIDED that any amount of such principal or interest that is overdue shall bear interest at the rate of 5 1/4% per annum (to the extent that payment of such interest shall be legally enforceable), from the date such amount is due until it is paid or made available for payment, and such interest on any overdue amount shall be payable on demand. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose

name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the June 1 or December 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice thereof shall be given to Holders of Securities not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

Payment of the principal of and interest on this Security will be made in immediately available funds and in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York, PROVIDED, HOWEVER, that payment of interest may, at the option of the Company, be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register. If this Security is a Global Security, then each such payment will be made in accordance with the procedures of the Depositary as then in effect.

Interest on this Security shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof or an Authenticating Agent by the manual signature of one of their respective authorized signatories, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this Security to be duly executed under its corporate seal.

ASPEN TECHNOLOGY, INC.

[Corporate Seal]

By _____
Title:

Attest:

Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

Dated: THE CHASE MANHATTAN BANK,
as Trustee

By: _____
Authorized Signatory

SECTION 2.3 FORM OF REVERSE OF SECURITY.

This Security is one of a duly authorized issue of securities of the Company designated as its "5 1/4% Convertible Subordinated Debentures due June 15, 2005" (herein called the "Securities"), limited in aggregate principal amount to \$86,250,000 issued and to be issued under an Indenture, dated as of June 17, 1998 (herein called the "Indenture") between the Company and The Chase Manhattan Bank, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which the Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the Holders of Senior Debt of the Company and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered.

No sinking fund is provided for in the Securities. The Securities may not be redeemed at the option of the Company prior to June 15, 2001. Thereafter, the Securities may be redeemed at the option of the Company, in whole or in part, at the Redemption Prices set forth below. Such Redemption Prices (expressed as a percentage of principal amount) are as follows for the 12-month period beginning on June 15, 2001 and on June 15 of the years following 2001:

Year ----	Redemption Price -----
2001	103.00%
2002	102.25
2003	101.50
2004	100.75

in each case together with accrued interest to the Redemption Date, provided that interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.

In the event of a redemption of the Securities, the Company will not be required (a) to register the transfer or exchange of Registered Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Securities called for such redemption or (b) to register the transfer or exchange of any Registered Security, or portion thereof, called for redemption.

Notice of redemption (which notice shall be irrevocable) will be given by first-class mail to Holders of Securities at their registered addresses as recorded in the Security Register. Notice will be given not more than 60 nor less than 30 days prior to the Redemption Date, as provided in the Indenture.

In any case where the due date for the payment of the principal of, premium, if any, or interest (including Liquidated Damages) on, any Security or the last day on which a Holder of a Security has a right to convert its Security shall be at any place of payment or place of conversion, as the case may be, a day on which banking institutions at such place of payment or place of conversion are authorized or obligated by law or executive order to close, then payment of principal of, premium, if any, or interest (including Liquidated Damages) on, or delivery for conversion of such Security need not be made on or by such date at such place but may be made on or by the next succeeding day at such place which is not a day on which banking institutions are authorized or obligated by law or executive order to close, with the same force and effect as if made on the date for such payment or the date fixed for

redemption or repurchase, or at the Stated Maturity or by such last day for conversion, and no interest shall accrue for the period after such date.

Subject to and upon compliance with the provisions of the Indenture, the Holder of this Security is entitled, at its option, at any time on or after the last original issue date of the Securities and prior to the close of business on June 15, 2005, or in case this Security is called for redemption or the Holder hereof has exercised its right to require the Company to repurchase this Security, then in respect of this Security until and including, but (unless the Company defaults in making the payment due upon redemption or repurchase, as the case may be) not after, the close of business on the fifth Trading Day preceding the Redemption Date or the second Trading Day preceding the Repurchase Date, as the case may be, to convert this Security into newly issued fully paid and nonassessable shares of Common Stock of the Company at an initial Conversion Rate equal to 18.8791 shares of Common Stock per \$1,000 principal amount of Securities (or at the current adjusted Conversion Rate if an adjustment has been made as provided in the Indenture) by surrender of this Security, and also a duly executed conversion notice, substantially in the form provided in Annex A of the Indenture (including the tax certification contained in such notice), to the Company, subject to any laws or regulations applicable thereto and subject to the right of the Company to terminate the appointment of the Conversion Agent (as defined below), at the Corporate Trust Office of the Trustee in The City of New York or at such other offices or agencies outside the United States that the Company may designate (each a "Conversion Agent"). Any Security surrendered for conversion during a Record Date Period (except Securities surrendered for conversion for which conversion rights would terminate during the Record Date Period as a result of a call for redemption or a repurchase) must be accompanied by payment of an amount equal to the interest payable on the Interest Payment Date relating to such Record Date Period on the principal amount of such Security being surrendered for conversion, and the interest payable in respect of such Security (including Securities surrendered for conversion for which conversion rights would terminate during the Record Date Period as a result of a call for redemption or a repurchase) on such Interest Payment Date shall be paid to the Holder of such Security as of the Regular Record Date relating to such Record Date Period. Interest payable in respect of any Security surrendered for conversion on or after an Interest Payment Date shall be paid to the Holder of such Security as of the next preceding Regular Record Date, notwithstanding the exercise of the right of conversion.

The Company shall thereafter deliver to the Holder the fixed number of shares of Common Stock (together with any cash adjustment, as provided in the Indenture) into which this Security is convertible and such delivery will be deemed to satisfy the Company's obligation to pay the principal amount of this Security. No fractions of shares or scrip representing fractions of shares will be issued on conversion, but instead of any fractional interest (calculated to the nearest 1/100th of a share) the Company shall pay a cash adjustment as provided in the Indenture, or alternatively

the Company shall round up the conversion transaction to the next higher whole share. In addition, the Indenture provides that in case of certain consolidations or mergers to which the Company is a party or the sale or transfer of all or substantially all of the assets of the Company, the Indenture shall be amended, without the consent of any Holders of Securities, so that this Security, if then Outstanding, will be convertible thereafter, during the period this Security shall be convertible as specified above, only into the kind and amount of securities, cash and other property receivable upon consolidation, merger, sale or transfer by a holder of the number of shares of Common Stock of the Company into which this Security might have been converted immediately prior to such consolidation, merger, sale or transfer (assuming such holder of Common Stock failed to exercise any rights of election and received per share the kind and amount received per share by a plurality of Non-Electing Shares). Adjustments in the Conversion Rate of less than one percent of such price will not be required, but any adjustment that would otherwise be required to be made will be carried forward and taken into account in the computation of any subsequent adjustment.

Notwithstanding any provision hereof, no securities will be delivered on conversion of this Security or any portion hereof unless the certification and other requirements described in the Indenture are satisfied.

Subject to certain limitations in the Indenture, at any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, as amended, upon the request of a Holder of a Restricted Security or the holder of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder of Restricted Securities or such holder of shares of Common Stock issued upon conversion of Restricted Securities, or to a prospective purchaser of any such security designated by any such Holder or holder, as the case may be, to the extent required to permit compliance by any such holder with Rule 144A under the Securities Act. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).

The Holder of this Security and the Common Stock of the Company issuable upon conversion hereof is entitled to the benefits of a Registration Rights Agreement (subject to the provisions thereof), dated as of June 17, 1998, between the Company and the Initial Purchasers (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, the Company has agreed for the benefit of the Holders from time to time of the Securities and the Common Stock issuable upon conversion thereof that it will, at its expense, (a) within 90 days after the date of issuance of the Securities, file a shelf registration statement (the "Shelf Registration Statement") with the Commission with respect to resales of the Securities and the Common Stock issued or issuable upon conversion thereof (together, the "Registrable Securities"), (b) use its reasonable best efforts to cause such Shelf Registration

Statement to be declared effective by the Commission as promptly as practicable but no later than 90 days after the filing of the Shelf Registration Statement, and (c) use its reasonable best efforts to maintain such Shelf Registration Statement continuously effective under the Securities Act, until (A) the second anniversary of the later of (i) the effective date of the Shelf Registration Statement and (ii) the last original issuance of the Debentures or (B) such earlier date as is provided in the Registration Rights Agreement (the earlier to occur of (A) or (B) being referred to herein as the "Termination Date").

If (i) on or prior to 90 days following the first date of original issuance of the Securities, the Shelf Registration Statement has not been filed with the Commission, or (ii) on or prior to 90 days following the filing of the Shelf Registration Statement, such Shelf Registration Statement is not declared effective (each, a "Registration Default"), additional interest ("Liquidated Damages") will accrue on this Security from and including the day following such Registration Default to but excluding the day on which such Registration Default has been cured. Liquidated Damages will be paid semi-annually in arrears, with the first semi-annual payment due on the first Interest Payment Date in respect of the Securities following the date on which such Liquidated Damages begin to accrue, and will accrue at a rate per annum equal to an additional one-quarter of one percent (0.25%) of the principal amount of the Securities to and including the 90th day following such Registration Default and at a rate per annum equal to one-half of one percent (0.50%) thereof from and after the 91st day following such Registration Default. In the event that the Shelf Registration Statement ceases to be effective prior to the Termination Date, for a period in excess of 60 days, whether or not consecutive, during any 12-month period, then the interest rate borne by the Securities shall increase by an additional one-half of one percent (0.50%) per annum from the 61st day of the applicable 12-month period such Shelf Registration Statement ceases to be effective to but excluding the earlier of the Termination Date or the day on which the Shelf Registration Statement again becomes effective.

Whenever in this Security there is a reference, in any context, to the payment of the principal of, premium, if any, or interest on, or in respect of, any Security such mention shall be deemed to include mention of the payment of Liquidated Damages payable as described in the preceding paragraph to the extent that, in such context, Liquidated Damages are, were or would be payable in respect of such Security and express mention of the payment of Liquidated Damages (if applicable) in any provisions of this Security shall not be construed as excluding Liquidated Damages in those provisions of this Security where such express mention is not made.

The Holder of this Security, by its acceptance thereof, agrees to be bound by the terms of the Registration Rights Agreement relating to the Securities and the Common Stock issuable upon conversion hereof.

If a Change of Control occurs, the Holder of this Security shall have the right, at the Holder's option in accordance with the provisions of the Indenture, to require the Company to repurchase this Security (or any portion of the principal amount hereof that is an integral multiple of \$1,000) at a Repurchase Price equal to 100% of the principal amount thereof plus interest accrued to the Repurchase Date. At the option of the Company, the Repurchase Price may be paid in cash or, except as otherwise provided in the Indenture, by delivery of Common Stock having a fair market value equal to the Repurchase Price. Payment may not be made in Common Stock unless the Company satisfies certain conditions prior to the Repurchase Date as provided in the Indenture. For purposes of this paragraph, the fair market value of shares of Common Stock shall be determined by the Company and shall be equal to 95% of the average of the Closing Prices Per Share for the five consecutive Trading Days ending on and including the third Trading Day immediately preceding the Repurchase Date. Whenever in this Security there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price payable in respect of such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Security shall not be construed as excluding the Repurchase Price in those provisions of this Security when such express mention is not made.

The indebtedness evidenced by this Security is, to the extent and in the manner provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all amounts then or thereafter to become due on all Senior Debt of the Company, and this Security is issued subject to such provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee its attorney-in-fact for any and all such purposes.

If an Event of Default shall occur and be continuing, the principal of all the Securities may be declared due and payable to the extent, in the manner and with the effect provided in the Indenture. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal and overdue interest, all of the Company's obligations in respect of the payment of the principal of and interest on the Securities shall terminate.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with either (a) the written consent of the Holders of a majority in principal amount of the Securities at the time Outstanding, or (b) by the adoption of a resolution, at a meeting of Holders of the Outstanding

Securities at which a quorum is present, by the Holders of 66 2/3% in aggregate principal amount of the Outstanding Securities represented at such meeting. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security or such other Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default, the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default and offered the Trustee indemnity satisfactory to it and the Trustee shall not have received from the Holders of a majority in principal amount of the Securities Outstanding a direction inconsistent with such request and shall have failed to institute any such proceedings for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or interest hereon (including any Liquidated Damages) on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligations of the Company, which are absolute and unconditional, to pay the principal of, premium, if any, and interest (including Liquidated Damages) on this Security at the times, places and rate, and in the coin or currency, herein prescribed or to convert this Security as provided in the Indenture.

As provided in the Indenture and subject to certain limitations and satisfaction of certain requirements therein set forth, the transfer of this Security is registrable on the Security Register upon surrender of this Security for registration of transfer at the office or agency of the Company as may be designated by it for such purpose in the Borough of Manhattan, The City of New York, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made to the Holder for any such registration of transfer or exchange, but the Company may require payment of a sum

sufficient to recover any tax or other governmental charge payable in connection therewith.

Prior to due presentation of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner hereof for all purposes, whether or not such Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

THE INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES REGARDING CONFLICTS OF LAWS.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

ELECTION OF HOLDER TO REQUIRE REPURCHASE

1. Pursuant to Section 15.1 of the Indenture, the undersigned hereby elects to have this Security repurchased by the Company.

2. The undersigned hereby directs the Trustee or the Company to pay it or _____ an amount in cash or, at the Company's election, Common Stock valued as set forth in the Indenture, equal to 100% of the principal amount hereof, plus interest accrued to the Repurchase Date, as provided in the Indenture.

Dated: _____

Signature

Signature Guaranteed

Principal amount to be repurchased: _____

Remaining principal amount following such repurchase: _____

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

SECTION 2.4 FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION.

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

DATED: THE CHASE MANHATTAN BANK,
as Trustee

By: -----
Authorized Signatory

ARTICLE III
THE SECURITIES

SECTION 3.1 TITLE AND TERMS.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is limited to \$86,250,000, except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities pursuant to Sections 3.4, 3.5, 3.6, 9.5, or 13.2.

The Securities shall be known and designated as the "5 1/4% Convertible Subordinated Debentures due June 15, 2005" of the Company. Their Stated Maturity shall be June 15, 2005 and they shall bear interest at the rate of 5 1/4% per annum from June 17, 1998 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, as the case may be, payable semi-annually in arrears on June 15 and December 15 of each year, commencing December 15, 1998, and at Maturity, until the principal thereof is paid or made available for payment, PROVIDED that any amount of such principal or interest that is overdue shall bear interest at the rate of 5 1/4% per annum (to the extent that payment of such interest shall be legally enforceable), from the date such amount is due until it is paid or made available for payment, and such interest on any overdue amount shall be payable on demand.

The principal of, premium, if any and interest on the Securities (including Liquidated Damages), shall be payable in immediately available funds and in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, at the Corporate Trust Office of the Trustee in the Borough of Manhattan, The City of New York or, at the option of the

Holder and subject to any fiscal or other laws and regulations applicable thereto, at any other office of the Trustee or any Paying Agent outside The City of New York; PROVIDED, however, that payment of interest may, at the option of the Company, be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

The Securities shall be redeemable at the Company's option, in whole or in part, at any time on or after June 15, 2001 as provided in the form of Securities set forth in Sections 2.2 and 2.3 and Article XII.

The Securities shall be convertible as provided in Article XIII.

The Securities shall be subordinated in right of payment to Senior Debt of the Company as provided in Article XIV.

The Securities shall be subject to repurchase by the Company at the option of the Holders as provided in Article XV.

SECTION 3.2 DENOMINATIONS.

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

SECTION 3.3 EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

The Securities shall be executed on behalf of the Company by any one of its Chairman of the Board, its Chief Executive Officer, its President, or any one of its Vice Presidents, under a facsimile of its corporate seal reproduced thereon attested by its Secretary or one of its Assistant Secretaries. Any such signature may be manual or facsimile.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with such Company Order shall authenticate and make available for delivery such Securities as in this Indenture provided and not otherwise.

Each Security shall be dated the date of its authentication.

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

SECTION 3.4 TEMPORARY SECURITIES.

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

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 any office or agency of the Company designated pursuant to Section 11.2, 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 make available for delivery 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.

For purposes of this Section 3.4, each Global Security shall be considered a definitive Security.

SECTION 3.5 REGISTRATION, REGISTRATION OF TRANSFER AND EXCHANGE; RESTRICTIONS ON TRANSFER.

(a) The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 11.2 being herein sometimes collectively referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided. Upon

surrender for registration of transfer of any Security at an office or agency of the Company designated pursuant to Section 11.2 for such purpose, and subject to the other provisions of this Section 3.5, the Company shall execute, and the Trustee shall authenticate and make available for delivery, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate principal amount.

At the option of the Holder, and subject to the other provisions of this Section 3.5, Securities may be exchanged for other Securities of any authorized denominations and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, and subject to the other provisions of this Section 3.5, the Company shall execute, and the Trustee shall authenticate and make available for delivery, the Securities which the Holder making the exchange is entitled to receive.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and subject to the other provisions of this Section 3.5, entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

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

No service charge shall be made to the Holder for any registration of transfer or exchange of securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.4, 13.2 or 15.3(f) not involving any transfer and subject to Section 13.9.

(b) Notwithstanding any other provisions of this Indenture or the Securities (but subject to Section 2.1), transfers of a Global Security, in whole or in part, shall be made only in accordance with this Section 3.5(b). Transfers and exchanges subject to this Section 3.5 shall also be subject to the other provisions of this Indenture that are not inconsistent with this Section 3.5.

A Global Security may not be transferred, in whole or in part, to any Person other than the Depositary or a nominee thereof, and no such transfer to any such other Person may be registered; PROVIDED that this clause 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. Nothing in this Section 3.5(b) shall prohibit or render ineffective any transfer of a beneficial interest in a Global Security effected in accordance with the other provisions of this Section 3.5(b).

(c) Each Restricted Security and Global Security issued hereunder shall, upon issuance, bear the legends required by Section 2.2 to be applied to such a Security and such required legends shall not be removed from such Security except as provided in the next sentence or paragraph (d) of this Section 3.5. The legend required for a Restricted Security may be removed from a Security if there is delivered to the Company such satisfactory evidence, which may include an opinion of independent counsel, as may be reasonably required by the Company that neither such legend nor the restrictions on transfer set forth therein are required to ensure that transfers of such Security will not violate the registration requirements of the Securities Act. Upon provision of such satisfactory evidence, the Trustee, at the written direction of the Company, shall authenticate and deliver in exchange for such Security another Security or Securities having an equal aggregate principal amount that does not bear such legend. If such a legend required for a Restricted Security has been removed from a Security as provided above, no other Security issued in exchange for all or any part of such Security shall bear such legend, unless the Company has reasonable cause to believe that

such other Security is a "restricted security" within the meaning of Rule 144 and instructs the Trustee in writing to cause a legend to appear thereon.

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

(1) Each Global Security authenticated under this Indenture shall be registered in the name of the Depositary or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(2) Notwithstanding any other provision in this Indenture or the Securities, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary or a nominee thereof unless (A) the Depositary (i) has notified the Company that it is unwilling or unable to continue as Depositary for such Global Security, (ii) has ceased to be a clearing agency registered under the Exchange Act or (iii) announces an intention permanently to cease business or does in fact do so, (B) there shall have occurred and be continuing an Event of Default with respect to such Global Security or (C) a request for certificates has been made upon 60

days' prior written notice given to the Trustee in accordance with the Depository's customary procedures and a copy of such notice has been received by the Company from the Trustee. Any Global Security exchanged pursuant to clause (A) above shall be so exchanged in whole and not in part and any Global Security exchanged pursuant to clause (B) or (C) 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.

(3) Securities issued in exchange for a Global Security or any portion thereof pursuant to clause (2) above 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 any legends required hereunder. Any Global Security to be exchanged in whole shall be surrendered by the Depository to the Trustee, as Security 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 Depository 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 make

available for delivery the Security issuable on such exchange to or upon the written order of the Depository or an authorized representative thereof.

(4) In the event of the occurrence of any of the events specified in clause (2) above, the Company will promptly make available to the Trustee a reasonable supply of certificated Securities in definitive, fully registered form, without interest coupons.

(5) No member of, or participants in, the Depository (each an "Agent Member") nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Security, or under any Global Security, and the Depository 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 Depository or such nominee, as the case may

be, or impair, as between the Depositary, its Agent Members and any other person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Security.

SECTION 3.6 MUTILATED, DESTROYED, LOST OR STOLEN SECURITIES.

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

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

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

A Holder shall bear the cost to the Company of replacing a mutilated, destroyed, stolen or lost Security. Upon the issuance of any new Security under this Section, the Company also 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 destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities 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 3.7 PAYMENT OF INTEREST, INTEREST RIGHTS PRESERVED.

Interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

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

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

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such

notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section and Section 3.5, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Any Security surrendered for conversion during a Record Date Period (except Securities surrendered for conversion for which conversion rights would terminate during the Record Date Period as a result of a call for redemption or a repurchase as provided in Section 13.1) must be accompanied by payment of an amount equal to the interest payable on the Interest Payment Date relating to such Record Date Period on the principal amount of such Securities being surrendered for conversion, and the interest payable in respect of such Security (including Securities surrendered for conversion for which conversion rights would terminate during the Record Date Period as a result of a call for redemption or a repurchase as provided in Section 13.1) on such Interest Payment Date shall be paid to the Holder of such Security as of the Regular Record Date relating to such Record Date Period. Interest payable in respect of any Security surrendered for conversion on or after an Interest Payment Date shall be paid to the Holder of such Security as of the next preceding Regular Record Date, notwithstanding the exercise of the right of conversion.

SECTION 3.8 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 shall treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of and (subject to Sections 3.5 and 3.7) interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 3.9 CANCELLATION.

All Securities surrendered for payment, redemption, repurchase, registration of transfer or exchange or conversion shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee. All Securities so delivered shall be canceled promptly by the Trustee. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this

Section 3.9 except as expressly permitted by this Indenture. Unless otherwise requested by the Company and confirmed in writing, the Trustee shall, from time to time but not less than once annually, destroy all canceled Debentures and deliver to the Company a certificate of destruction, which certificate shall specify the number and principal amount of each canceled Debenture so destroyed. All canceled Securities and any certificates in connection therewith shall be held by the Trustee in accordance with its customary practices until destroyed by the Trustee; PROVIDED, HOWEVER, that the Trustee shall not be required to destroy such Securities. The Company may not issue new Securities to replace Securities it has paid in full or delivered to the Trustee for cancellation.

SECTION 3.10 COMPUTATION OF INTEREST.

Interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 3.11 CUSIP NUMBERS.

The Company in issuing the Securities may use "CUSIP" and "CINS" numbers (if then generally in use), and the Trustee shall use CUSIP numbers or CINS numbers, as the case may be, in notices of redemption, repurchase or exchange as a convenience to the 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 redemption, repurchase or exchange and that reliance may be placed only on the other identification numbers printed on the Securities.

ARTICLE IV

SATISFACTION AND DISCHARGE

SECTION 4.1 SATISFACTION AND DISCHARGE OF INDENTURE.

This Indenture shall upon Company Request cease to be of further effect (except as to any surviving rights of conversion, or replacement of Securities herein expressly provided for and any right to receive the payment of principal of, premium, if any, or interest on, such Securities or Liquidated Damages under the tenth paragraph on the reverse of the form of Securities set forth in Section 2.3), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

- (1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.6 and (ii) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 11.3) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation (other than Securities referred to in clauses (i) and (ii) of clause (1)(A) above)

(i) have become due and payable, or

(ii) will have become due and payable at their Stated Maturity within one year,

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, or

(iv) have been delivered to the Trustee for conversion in accordance with Article XIII,

and the Company, in the case of clause (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds (immediately available to the Holders in the case of clause (i)) in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal, premium, if any, and interest (including any Liquidated Damages), to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company including fees, expenses, disbursements and advances incurred or made by the Trustee, its agent or counsel in accordance with any provision of this Indenture;

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

evidencing and/or securing Senior Debt have been obtained and are in full force and effect; and

(4) no Event of Default shall have occurred and be continuing on the date of such deposit.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.7 and, if money shall have been deposited with the Trustee pursuant to clause (1)(B) of this Section 4.1, the obligations of the Trustee under Section 4.2 and the last paragraph of Section 11.3 shall survive. Funds held in trust pursuant to this Section are not subject to the provisions of Article XIV.

SECTION 4.2 APPLICATION OF TRUST MONEY.

Subject to the provisions of the last paragraph of Section 11.3, all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and interest for whose payment such money has been deposited with the Trustee.

All moneys deposited with the Trustee pursuant to Section 4.1 (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be returned to the Company upon Company Request.

If the Trustee or Paying Agent is unable to apply any amount deposited with it by the Company in accordance with Section 4.1 hereof by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 4.1 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 4.1 hereof; PROVIDED, HOWEVER, that, if the Company makes any payment of principal of, premium, if any, or interest (including Liquidated Damages) on any Security following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE V

REMEDIES

SECTION 5.1 EVENTS OF DEFAULT.

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

(1) failure to pay the principal, premium, Redemption Price or Repurchase Price of any Security at its Maturity, whether or not such payment is prohibited pursuant to Article XIV hereof; or

(2) failure to pay any interest (including any Liquidated Damages) upon any Security when it becomes due and payable, whether or not such payment is prohibited pursuant to Article XIV hereof, and continuance of such default for a period of 30 days; or

(3) failure to provide a Company Notice in the event of a Change of Control as provided by Section 15.3; or

(4) failure to perform any other covenant or warranty of the Company in this Indenture (other than a covenant a default in whose performance or whose breach is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) Any Indebtedness by the Company in an outstanding principal amount in excess of \$5,000,000, whether such Indebtedness now exists or shall hereafter be created, is not paid at final maturity or the payment thereof is accelerated and such default in payment or acceleration has not been cured or rescinded or annulled within a period of 30 days after there shall have been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities a written notice specifying such default and requiring the Company to cause such Indebtedness to be discharged or cause such acceleration to be rescinded or annulled and stating that such notice is a

"Notice of Default" hereunder; PROVIDED, HOWEVER, that the Trustee shall have no obligation, either express or implied, to give any notice, make any demand, make any collection, initiate any judicial proceeding, file any proofs of claim or take any action as a result of an Event of Default described in this clause (5), unless and until the Trustee has received written notice of such Event of Default from the Company, a Holder of a Security or a holder of Indebtedness of the Company;

(6) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

(7) the commencement by the Company of a voluntary case or proceeding under the applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

SECTION 5.2 ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT.

If an Event of Default (other than an Event of Default specified in Section 5.1(1), (2), (6) or (7)) occurs and is continuing, then and in every such case the Trustee shall, at the written request of the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities, or the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities shall directly, by notice in

writing to the Company, declare the principal of all the Securities to be due and payable immediately, and upon any such declaration such principal and any accrued interest and any unpaid Liquidated Damages thereon shall become immediately due and payable. If an Event of Default specified in Section 5.1(1) or (2) occurs and is continuing, the Holder of any Outstanding Security may, by notice in writing to the Company (with a copy to the Trustee), declare the principal of such Security to be due and payable immediately, and upon any such declaration such principal and (subject to Section 3.7) any accrued interest and Liquidated Damages thereon shall become immediately due and payable. If an Event of Default specified in Sections 5.1(6) or (7) occurs and is continuing, the principal of, premium, if any, and any accrued interest (including any Liquidated Damages) on, all of the Securities then Outstanding shall ipso facto become due and payable immediately without any declaration or other Act on the part of the Trustee or any Holder.

At any time after such declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article V provided, the Holders of a majority in principal amount of the Outstanding Securities, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue interest (including any Liquidated Damages) on all Securities,

(B) the principal of any Securities which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate borne by the Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at a rate of 5 1/4% per annum, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel;

and

(2) all Events of Default, other than the non-payment of the principal of, premium, if any, and any interest (including Liquidated Damages) on, Securities which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13.

No such rescission or annulment shall affect any subsequent default or impair any right consequent thereon.

SECTION 5.3 COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE.

The Company covenants that if

(1) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days,

or

(2) default is made in the payment of the principal of any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and on any overdue interest, at a rate of 5 1/4% per annum, and in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.7 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise, prior to any payment to such Holder.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement

of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 5.4 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 either of their creditors, the Trustee (irrespective of whether the principal of, and any interest on, the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise to take any and all actions under the Trust Indenture Act, including,

(1) to file and prove a claim for the whole amount of principal, premium, if any and interest (including Liquidated Damages) owing and unpaid in respect of the Securities and take such other actions, including participating as a member, voting or otherwise, of any official committee of creditors appointed in such matter, 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 and each predecessor Trustee, its agents and counsel) and of the Holders of Securities allowed in such judicial proceeding, and

(2) to collect and receive any moneys or other property payable or deliverable on any such claim and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of Securities by such Person's acceptance thereof 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 of Securities, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, and each predecessor Trustee, its agents and counsel and any other amounts due the Trustee under Section 6.7.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security 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 of a Security in any such proceeding; PROVIDED, HOWEVER, that the Trustee may, on behalf of such

Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

SECTION 5.5 TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, and each predecessor Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which judgment has been recovered.

SECTION 5.6 APPLICATION OF MONEY COLLECTED.

Any money collected by the Trustee pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.7;

SECOND: To the payment of the amounts then due and unpaid for principal of, premium, if any, and interest (including any Liquidated Damages) on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal, premium, if any, and interest (including any Liquidated Damages), respectively; and

THIRD: Subject to Article XIV, any remaining amounts shall be repaid to the Company.

The Trustee, upon written notice to the Company, may fix a record date for any payment due to Holders pursuant to this Section 5.6.

SECTION 5.7 LIMITATION ON SUITS.

No Holder of any Security shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default;

(2) the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred or reasonably probable to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

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

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

In the event the Trustee shall receive conflicting or inconsistent requests and indemnity from two or more groups of the Holders, each representing less than a majority in aggregate principal amount of the Outstanding Securities, the Trustee in its sole discretion may determine what action, if any, shall be taken, notwithstanding any other provisions of this Indenture, and shall have no liability to any person for such action or inaction.

SECTION 5.8 UNCONDITIONAL RIGHT OF HOLDERS TO RECEIVE PRINCIPAL AND INTEREST AND TO CONVERT.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of, premium, if any, (subject to Section 3.7) interest (including any Liquidated Damages) the Redemption Price and the Repurchase Price on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption or repurchase, on the Redemption Date or Repurchase Date, as the case may be), and to convert such Security in accordance with Article XIII, and to

institute suit for the enforcement of any such payment and right to convert, and such rights shall not be impaired without the consent of such Holder.

SECTION 5.9 RESTORATION OF RIGHTS AND REMEDIES.

If the Trustee or any Holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders of Securities shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and such Holders shall continue as though no such proceeding had been instituted.

SECTION 5.10 RIGHTS AND REMEDIES CUMULATIVE.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.6, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 5.11 DELAY OR OMISSION NOT WAIVER.

No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or any acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee or to the Holders of Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Securities, as the case may be.

SECTION 5.12 CONTROL BY HOLDERS OF SECURITIES.

The Holders of a majority in principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture, and

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction or this Indenture.

SECTION 5.13 WAIVER OF PAST DEFAULTS.

The Holders, either (a) through the written consent of not less than a majority in principal amount of the Outstanding Securities, or (b) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least a majority in aggregate principal amount of the Outstanding Securities represented at such meeting, may on behalf of the Holders of all the Securities waive any past default hereunder and its consequences, except a default (1) in the payment of the principal of, premium, if any, or interest (including any Liquidated Damages) on any Security, or (2) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holders of each Outstanding Security affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 5.14 UNDERTAKING FOR COSTS.

All parties to this Indenture agree, and each Holder of any Security by its acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder of any Security for the enforcement of the payment of the principal of or interest on any Security on or after the respective Stated Maturity or Maturities expressed in such Security (or, in the case of redemption or repurchase, on or after the Redemption Date or the Repurchase Date, as the case may be) or for the enforcement of the right to convert any Security in accordance with Article XIII.

SECTION 5.15 WAIVER OF STAY OR EXTENSION LAWS.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution 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 VI

THE TRUSTEE

SECTION 6.1 CERTAIN DUTIES AND RESPONSIBILITIES.

(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 their 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,

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

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

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

(1) this paragraph (c) shall not be construed to limit the effect of paragraph (b) of this Section;

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture including Sections 5.2, 5.12 and 5.13; and

(4) no provision of this Indenture shall require to Trustee to expend or risk its own funds or incur any liability; the Trustee shall be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

SECTION 6.2 NOTICE OF DEFAULTS.

Within 90 days after the occurrence of any default hereunder, the Trustee shall give to all Holders of Securities, in the manner provided in Section 1.5, notice of such default hereunder actually known to a Responsible Officer of the Trustee, unless such default shall have been cured or waived; PROVIDED, HOWEVER, that in the case of any default of the character specified in Section 5.1(4), no such notice to Holders of Securities shall be given until at least 30 days after the occurrence of such default. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

SECTION 6.3 CERTAIN RIGHTS OF TRUSTEE.

Subject to the provisions of Section 6.1:

(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, Officers' Certificate, other certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed

by it to be genuine and to have been signed or presented by the proper party or parties;

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

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

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

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

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(g) 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; and

(h) the Trustee shall not be deemed to have notice of any Event of Default unless a Responsible Officer in the Corporate Trust Office of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact an Event of

Default is received by the Trustee at the Corporate Trust Office of the Trustee and such notice references the Securities and this Indenture.

SECTION 6.4 NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES.

The recitals contained herein and in the Securities (except the Trustee's certificates of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

SECTION 6.5 MAY HOLD SECURITIES, ACT AS TRUSTEE UNDER OTHER INDENTURES.

The Trustee, any Authenticating Agent, any Paying Agent, any Conversion Agent or any other agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Conversion Agent or such other agent.

The Trustee may become and act as trustee under other indentures under which other securities, or certificates of interest or participation in other Securities, of the Company are outstanding in the same manner as if it were not Trustee hereunder.

SECTION 6.6 MONEY HELD IN TRUST.

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

SECTION 6.7 COMPENSATION AND INDEMNIFICATION OF TRUSTEE AND ITS PRIOR CLAIMS.

The Company agrees

(1) to pay to the Trustee from time to time 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 by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable fees, expenses, disbursements and

advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the fees, expenses and disbursements of its agents and counsel), except any such fee, expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(3) to indemnify the Trustee (and its directors, officers, employees and agents) for, and to hold it harmless against, any and all loss, damage, claim, liability or expense, including taxes (other than taxes based on 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 reasonable costs, expenses and reasonable attorneys' fees of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. In addition to and not in limitation of the preceding sentence, the Company agrees to indemnify and hold the Trustee (and its directors, officers, employees and agents) harmless from and against any claims, liabilities, losses, damages, fines, penalties and expenses, including out-of-pocket and incidental expenses and legal fees that may be imposed on, incurred by, or asserted against the Trustee (or its directors, officers, employees or agents) for following any instructions or directions upon which the Trustee is authorized to rely pursuant to the terms of this Agreement.

The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. However, failure by the Trustee to so promptly notify the Company shall not relieve the Company of its obligations under this Section 6.7 except to the extent such failure shall have materially prejudiced the Company. The Company shall, unless the Trustee requests separate counsel, defend any such claim and the Trustee shall cooperate in the defense of such claim. If the Trustee is advised by counsel that it may have available to it defenses that are in conflict with any defenses available to the Company, the Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay any settlement made without its consent.

When the Trustee incurs expenses or renders services in connection with an Event or Default specified in Section 5.1(6) or Section 5.1(7), the expenses (including the reasonable charges of its counsel) and the compensation for the services are intended to constitute expenses of the administration under any applicable Federal or State bankruptcy, insolvency or other similar law.

The Trustee shall have a lien prior to the Securities as to all property and funds held by it hereunder for any amount owing it or any predecessor Trustee pursuant to this Section 6.7, except with respect to funds held in trust for the benefit of the Holders of particular Securities.

The provisions of this Section shall survive the termination of this Indenture or the earlier resignation or removal of the Trustee.

SECTION 6.8 CORPORATE TRUSTEE REQUIRED; ELIGIBILITY.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America, any State thereof, or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or State authority, in good standing and having an established place of business in the Borough of Manhattan, The City of New York. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 6.9 RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.10.

(b) The Trustee may resign at any time by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by this Section 6.9 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by an Act of the Holders of a majority in principal amount of the Outstanding Securities, delivered to the Trustee and the Company.

(d) If at any time:

(1) the Trustee shall cease to be eligible under Section 6.8 and shall fail to resign after written request therefor by the Company or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

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

then, in any such case (i) the Company by a Board Resolution may remove the Trustee, or (ii) subject to Section 5.14, any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee and shall comply with the applicable requirements of this Section 6.9 and Section 6.10. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities delivered to the Company and the retiring Trustee, the successor Trustee so

appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.10, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Holders of Securities and accepted appointment in the manner required by this Section 6.9 and Section 6.10, any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to all Holders of Securities in the manner provided in Section 1.5. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

Notwithstanding the replacement of the Trustee pursuant to this Section 6.9, the Company's obligations under Section 6.7 shall continue for the benefit of the retiring Trustee.

The retiring Trustee shall not be liable for the acts or omissions of any successor Trustee hereunder.

SECTION 6.10 ACCEPTANCE OF APPOINTMENT BY SUCCESSOR.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the Successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be eligible under this Article.

SECTION 6.11 MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, PROVIDED such corporation shall be otherwise eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

SECTION 6.12 AUTHENTICATING AGENT.

The Trustee may appoint an Authenticating Agent or Agents acceptable to the Company with respect to the Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon exchange, registration of transfer, partial redemption or substitution pursuant to this Indenture. Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder, and every reference in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent

and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall at all times be a corporation organized and doing business under the laws of the United States of America or any State thereof and authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 or its equivalent in another currency or composite currencies and subject to supervision or examination by government authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.12, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.12, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.12.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, PROVIDED such corporation shall be otherwise

eligible under this Section 6.12, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.12, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 6.12.

If an Authenticating Agent is appointed with respect to the Securities pursuant to this Section 6.12, the Securities may have endorsed thereon, in addition to or in lieu of the Trustee's certification of authentication, an alternative certificate of authentication in the following form:

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

Dated: THE CHASE MANHATTAN BANK,
as Trustee

By: -----
as Authenticating Agent

By: -----
Authorized Signatory

SECTION 6.13 DISQUALIFICATION; CONFLICTING INTERESTS.

If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

ARTICLE VII

HOLDER'S LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 7.1 COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF HOLDERS.

The Company will furnish or cause to be furnished to the Trustee

(a) semi-annually, not more than 15 days after the Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities as of such Regular Record Date, and

(b) at such other times as the Trustee may reasonably request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

EXCLUDING from any such list names and addresses received by the Trustee in its capacity as Security Registrar.

SECTION 7.2 PRESERVATION OF INFORMATION; COMMUNICATIONS TO HOLDERS.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it pursuant to Section 7.1 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act for holders of securities issued under an indenture qualified pursuant to the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act or the Code.

SECTION 7.3 REPORTS BY THE COMPANY.

(a) The Company shall file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act. In the event the Company is not subject to Section 13 or 15(d) of the Exchange Act, it shall file with the Trustee upon request the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(b) The Company shall file with the Trustee such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants provided for in this Indenture as may be reasonably requested from time to time by the Trustee.

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE,
TRANSFER OR LEASE

SECTION 8.1 COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

The Company shall not consolidate with or merge into any other Person or, directly or indirectly, convey, transfer, sell or lease or otherwise dispose of all or substantially all of its properties and assets to any Person (other than a wholly owned Subsidiary of the Company), and the Company shall not permit any Person (other than a wholly owned Subsidiary of the Company) to consolidate with or merge into the Company or convey, transfer, sell, lease or otherwise dispose of all or substantially all of its properties and assets to the Company, unless:

(1) in case the Company shall consolidate with or merge into another Person or convey, transfer, sell or lease all or substantially all of its properties and assets to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance, transfer or sale, or which leases, all or substantially all of the properties and assets of the Company shall be a corporation, limited liability company, partnership or trust, shall be organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, the due and punctual payment of the principal of, premium, if any, and interest (including Liquidated Damages payable, if any, pursuant to Section 11.12) on all of the Securities, as applicable, and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and shall have provided for conversion rights in accordance with Article XIII;

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

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

SECTION 8.2 SUCCESSOR SUBSTITUTED.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer, sale, lease or other disposition of all or the properties and assets of the Company in accordance with Section 8.1, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer, sale, lease or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE IX

SUPPLEMENTAL INDENTURES

SECTION 9.1 SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS OF SECURITIES.

Without the consent of any Holders of Securities, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, for any of the following purposes:

(1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants and obligations of the Company herein and in the Securities as permitted by this Indenture; or

(2) to add to the covenants of the Company for the benefit of the Holders of Securities, or to surrender any right or power herein conferred upon the Company; or

(3) to secure the Securities; or

(4) to modify the restrictions on, and procedures for, resale and other transfers of the Securities to the extent required by any change in applicable law or regulation (or the interpretation thereof) or in practice relating to the resale or transfer of restricted securities generally; or

(5) to make provision with respect to the conversion rights of Holders of Securities pursuant to Section 13.12; or

(6) to accommodate the issuance, if any, of Securities in book-entry or definitive form and matters related thereto which do not adversely affect the interest of the Holders of Securities; or

(7) to comply with any requirements of the Commission in order to effect and maintain the qualification of this Indenture under the Trust Indenture Act; or

(8) to cure any ambiguity, to correct or supplement any provision herein, which may be inconsistent with any other provision herein or which is otherwise defective, or to make any other provisions with respect to matters or questions arising under this Indenture as the Company and the Trustee may deem necessary or desirable, PROVIDED, such action pursuant to this clause (8) shall not adversely affect the interests of the Holders of Securities in any material respect.

Upon Company Request, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and subject to and upon receipt by the Trustee of the documents described in Section 9.3 hereof, the Trustee shall join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture and any further appropriate agreements and stipulations which may be therein contained.

SECTION 9.2 SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS OF SECURITIES.

With either (a) the written consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities, by the Act of said Holders delivered to the Company and the Trustee, or (b) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of 66 2/3% in aggregate principal amount of the Outstanding Securities represented at such meeting, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; PROVIDED, HOWEVER, that no such supplemental indenture shall, without the consent or affirmative vote of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of interest on, any Security, or reduce the principal amount thereof or the rate of interest payable thereon or any premium payable upon redemption or mandatory repurchase thereof or change the obligation of the Company to pay Liquidated Damages pursuant to Section 11.12, or change the place or currency in which the principal of any Security or the premium or interest thereon is

payable (including any payment of any Liquidated Damages or the Repurchase Price in respect of such Security), or impair the right to institute suit for the enforcement of any such payment on or with respect to

any Security or, except as permitted by Section 13.12, adversely affect the right to convert any Security as provided in Article XIII, or modify the provisions of this Indenture with respect to the subordination of the Securities in a manner adverse to the Holders of Securities, or

(2) reduce the requirements of Section 10.4 for quorum or voting, or reduce the percentage in aggregate principal amount of the Outstanding Securities the consent of whose Holders is required for any such supplemental indenture or the consent of whose Holders is required for any waiver provided for in this Indenture, or

(3) modify the obligation of the Company to maintain an office or agency in The City of New York pursuant to Section 11.2, or

(4) modify any of the provisions of this Section, Section 5.13 or Section 11.11, except to increase any percentage contained herein or therein or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby, or

(5) modify any of the provisions of Sections 11.8, 11.10 or 11.12, or

(6) modify any provisions of Article XIII, XIV or XV in a manner adverse to the Holders.

It shall not be necessary for any Act of Holders of Securities under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 9.3 EXECUTION OF SUPPLEMENTAL INDENTURES.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and an Officers' Certificate to the effect that all conditions precedent have been satisfied. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 9.4 EFFECT OF SUPPLEMENTAL INDENTURES.

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

SECTION 9.5 REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES.

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Company and the Trustee, 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 9.6 NOTICE OF SUPPLEMENTAL INDENTURES.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of Section 9.2, the Company shall give notice to all Holders of Securities, in the manner provided in Section 1.6, of such fact, setting forth in general terms the substance of such supplemental indenture. Any failure of the Company to give such notice, or any defect therein, shall not in any way impair or affect the validity of any such supplemental indenture.

ARTICLE X**MEETINGS OF HOLDERS OF SECURITIES****SECTION 10.1 PURPOSES FOR WHICH MEETINGS MAY BE CALLED.**

A meeting of Holders of Securities may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities.

SECTION 10.2 CALL, NOTICE AND PLACE OF MEETINGS.

(a) The Trustee may at any time call a meeting of Holders of Securities for any purpose specified in Section 10.1, to be held at such time and at such place in The City of New York as the Trustee shall determine. Notice of every meeting of Holders of Securities, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 1.6, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in aggregate principal amount of the Outstanding Securities shall have requested the Trustee to call a meeting of the Holders of Securities for any purpose specified in Section 10.1, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities in the amount specified, as the case may be, may determine the time and the place in The City of New York for such meeting and may call such meeting for such purposes by giving notice thereof as provided in paragraph (a) of this Section.

SECTION 10.3 PERSONS ENTITLED TO VOTE AT MEETINGS.

To be entitled to vote at any meeting of Holders of Securities, a Person shall be (a) a Holder of one or more Outstanding Securities, or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 10.4 QUORUM; ACTION.

The Persons entitled to vote a majority in aggregate principal amount of the Outstanding Securities shall constitute a quorum. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities, be dissolved. In any other case, the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting (subject to repeated applications of this sentence). Notice of the reconvening of any adjourned meeting

shall be given as provided in Section 10.2(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage of the principal amount of the Outstanding Securities which shall constitute a quorum.

Subject to the foregoing, at the reconvening of any meeting adjourned for a lack of a quorum, the persons entitled to vote 25% in aggregate principal amount of the Outstanding Securities at the time shall constitute a quorum for the taking of any action set forth in the notice of the original meeting.

At a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid, any resolution and all matters (except as limited by the proviso to Section 9.2) shall be effectively passed and decided if passed or decided by the Persons entitled to vote not less than 66 2/3% in aggregate principal amount of Outstanding Securities represented and voting at such meeting.

Any resolution passed or decisions taken at any meeting of Holders of Securities duly held in accordance with this Section shall be binding on all the Holders of Securities, whether or not present or represented at the meeting.

SECTION 10.5 DETERMINATION OF VOTING RIGHTS; CONDUCT AND ADJOURNMENT OF MEETINGS.

(a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities in regard to proof of the holding of Securities and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 1.4 and the appointment of any proxy shall be proved in the manner specified in Section 1.4. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 1.4 or other proof.

(b) The Trustee shall, by an instrument in writing, appoint a temporary chairman (which may be the Trustee) of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 10.2(b), in which case the Company or the Holders of Securities calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by

vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting.

(c) At any meeting, each Holder of a Security or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities held or represented by him; PROVIDED, HOWEVER, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security or proxy.

(d) Any meeting of Holders of Securities duly called pursuant to Section 10.2 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting, and the meeting may be held as so adjourned without further notice.

SECTION 10.6 COUNTING VOTES AND RECORDING ACTION OF MEETINGS.

The vote upon any resolution submitted to any meeting of Holders of Securities shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 10.2 and, if applicable, Section 10.4. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE XI

COVENANTS

SECTION 11.1 PAYMENT OF PRINCIPAL AND INTEREST.

The Company will duly and punctually pay the principal of and interest on the Securities in accordance with the terms of the Securities and this Indenture.

SECTION 11.2 MAINTENANCE OF OFFICES OR AGENCIES.

The Company hereby appoints the Corporate Trust Office of the Trustee as its agent in The City of New York where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer or exchange, where conversion notices, certificates and other items required to be delivered to effect conversion may be delivered and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served.

The Company hereby appoints the Corporate Trust Office of the Trustee as Paying Agent for the payment of principal of and interest on the Securities and as Conversion Agent for the Conversion of any of the Securities in accordance with Article XIII, and appoints the Corporate Trust Office of the Trustee as transfer agent where Securities may be surrendered for registration of transfer or exchange.

The Company may at any time and from time to time vary or terminate the appointment of any such agent or appoint any additional agents with or without cause for any or all of such purposes; PROVIDED, HOWEVER, that until all of the Securities have been delivered to the Trustee for cancellation, or moneys sufficient to pay the principal of and interest on the Securities have been made available for payment and either paid or returned to the Company pursuant to the provisions of Section 11.3, the Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer or exchange, where Securities may be surrendered for conversion and where notices and demands to or upon the Company, in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee, and will give notice to Holders of Securities in the manner specified in Section 1.5, of the appointment or termination of any such agents and of the location and any change in the location of any such office or agency.

If at any time the Company shall fail to maintain any such required office or agency, or shall fail to furnish the Trustee with the address thereof, presentations and surrenders may be made and notices and demands may be served on and Securities

may be surrendered for conversion to the Corporate Trust Office of the Trustee, and the Company hereby appoints the same as its agent to receive such respective presentations, surrenders, notices and demands.

SECTION 11.3 MONEY FOR SECURITY PAYMENTS TO BE HELD IN TRUST.

If the Company at any time shall act as its own Paying Agent, it will, on or before each due date of the principal of or interest on any of the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and the Company will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, prior to or on each due date of the principal of or interest on any Securities, deposit with a Paying Agent a sum sufficient to pay the principal, premium, if any, or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium, if any, or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure so to act.

The Company will cause each Paying Agent other than the Trustee or affiliate of the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of or interest on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee written notice of any default by the Company (or any other obligor upon the securities) in the making of any payment of principal or interest; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and,

upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium, if any, or interest (together with any Liquidated Damages in respect thereof) on any Security and remaining unclaimed for two years after such principal or interest (together with any Liquidated Damages in respect thereof) has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as a general unsecured creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; PROVIDED, HOWEVER, that the Trustee or such Paying Agent, before making any such repayment, may at the expense of the Company cause to be published once, in an Authorized Newspaper in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 11.4 CORPORATE EXISTENCE.

Subject to Article VIII, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; PROVIDED HOWEVER, that the Company shall not be required to preserve any such right or franchise if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

SECTION 11.5 MAINTENANCE OF PROPERTIES.

The Company will cause all material properties used or useful in the conduct of its business or the business of any Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; PROVIDED HOWEVER, that nothing in this Section 11.5 shall prevent the Company from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business or the business of any Subsidiary and not disadvantageous in any material respect to the Holders.

SECTION 11.6 COMPLIANCE WITH LAWS.

The Company will comply, and cause each Subsidiary to comply, with the requirements of all applicable laws, ordinances, rules, regulations, and requirements of any governmental authority (including, without limitation, ERISA and the rules and regulations thereunder), except where the necessity of compliance therewith is contested in good faith by appropriate proceedings or where the failure to comply would not have a material adverse effect upon the Company and its Subsidiaries taken as a whole.

SECTION 11.7 PAYMENT OF TAXES AND OTHER CLAIMS.

The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Company or any Subsidiary; PROVIDED HOWEVER, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which disputed amounts adequate reserves in accordance with generally accepted accounting principals have been made.

SECTION 11.8 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 of a Restricted Security or the holder of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such holder of Restricted Securities or such holder of Common Stock issued upon conversion of Restricted Securities, or to a prospective purchaser of such security designated by any such Holder or holder, as the case may be, to the extent required to permit compliance by such holder with Rule 144A in connection with the resale of such Security by such Holder; PROVIDED HOWEVER, that the Company shall not be required to furnish such information in connection with any request made on or after the date which is two years from the later of (i) the date such a security (or any predecessor security) was acquired from the Company or (ii) the date such a security (or any predecessor security) was last acquired from the Company or an "affiliate" of the Company within the meaning of Rule 144. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).

SECTION 11.9 STATEMENT BY OFFICERS AS TO DEFAULT.

The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company 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.

The Company will also deliver to the Trustee, forthwith upon any Officer becoming aware of any Event of Default, an Officers' Certificate specifying with particularity such default or Event of Default and further stating what action the Company has taken, is taking or proposes to take with respect thereto.

Any notice required to be given under this Section 11.9 shall be delivered to the Trustee at its Corporate Trust Office and need not comply with the requirements of Section 1.5.

SECTION 11.10 RESALE OF CERTAIN SECURITIES.

During the period beginning on the last date of original issuance of the Securities and ending on the date that is two years from such date, the Company will not, and will not permit any of its "affiliates" (as defined under Rule 144) to, resell (x) any Securities which constitute "restricted securities" under Rule 144 or (y) any securities into which such Securities have been converted under this Indenture, which constitute "restricted securities" under Rule 144 that in either case have been reacquired by any of them. The Trustee shall have no responsibility in respect of the Company's performance of its agreement in the preceding sentence.

SECTION 11.11 WAIVER OF CERTAIN COVENANTS.

The Company may omit in any particular instance to comply with any covenant or condition set forth in Sections 11.5 or 11.7 if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities (or such lesser amount as shall have acted at a meeting pursuant to the provisions of this Indenture) shall either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

SECTION 11.12 REGISTRATION RIGHTS.

The holders of the Securities and the Common Stock issuable upon conversion thereof are entitled to the benefits of a Registration Rights Agreement, dated as of June 17, 1998, between the Company and the Initial Purchasers (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, the Company has agreed for the benefit of the holders from time to time of the Securities and the Common Stock issuable upon conversion thereof that it will, at its expense, (i) within 90 days after the first date of issuance of the original Securities, file a shelf registration statement (the "Shelf Registration Statement") with the Commission with respect to resales of the Securities and the Common Stock issued or issuable upon conversion thereof, (ii) use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective by the Commission as promptly as practicable but no later than 90 days after the filing of the Shelf Registration Statement and (iii) use its reasonable best efforts to maintain such Shelf Registration Statement continuously effective under the Securities Act until (A) the second annual anniversary of the later of (i) the effective date of the Shelf Registration Statement and (ii) the last original issuance of the Securities or (B) such earlier date as is provided in the Registration Rights Agreement (the earlier to occur of (A) or (B) being referred to herein as the "Termination Date").

If (i) on or prior to 90 days following the first date of original issuance of the Securities, the Shelf Registration Statement has not been filed with the Commission, or (ii) on or prior to 90 days following the filing of the Shelf Registration Statement, such Shelf Registration Statement is not declared effective (each, a "Registration Default"), additional interest ("Liquidated Damages") will accrue on the Securities from and including the day following such Registration Default to but excluding the day on which such Registration Default has been cured. The amount of Liquidated Damages resulting from any Registration Default is not currently ascertainable. Liquidated Damages will be paid semi-annually in arrears, with the first semi-annual payment due on the first Interest Payment Date in respect of the Securities following the date on which such Liquidated Damages begin to accrue, and will accrue at a rate per annum equal to an additional one-quarter of one percent (0.25%) of the principal amount of the Securities to and including the 90th day following such Registration Default and at a rate per annum equal to one-half of one percent (0.50%) thereof from and after the 91st day following such Registration Default. In the event that the Shelf Registration Statement ceases to be effective prior to the Termination Date, for a period in excess of 60 days, whether or not consecutive, during any 12-month period, then the interest rate borne by the Securities shall increase by an additional one-half of one percent (0.50%) per annum on the 61st day of the applicable 12-month period such Shelf Registration Statement ceases to be effective to but excluding the earlier of the Termination Date or the day on which the Shelf Registration Statement again becomes effective.

Whenever in this Indenture there is mentioned, in any context, the payment of the principal of, premium, if any, or interest on, or in respect of, any Security, such mention shall be deemed to include mention of the payment of Liquidated Damages provided for in this Section to the extent that, in such context, Liquidated Damages are, were or would be payable in respect thereof pursuant to the provisions of this Section and express mention of the payment of Liquidated Damages (if applicable) in any provisions hereof shall not be construed as excluding Liquidated Damages in those provisions hereof where such express mention is not made.

SECTION 11.13 BOOK-ENTRY SYSTEM.

If the Securities cease to trade in the Depository's book-entry settlement system, the Company covenants and agrees that it shall use reasonable efforts to make such other book-entry arrangements that it determines are reasonable for the Securities.

ARTICLE XII

REDEMPTION OF SECURITIES

SECTION 12.1 RIGHT OF REDEMPTION.

The Securities shall be redeemable at the Company's option, in whole or in part, under the circumstances and at the Redemption Prices specified in the form of Securities set forth in Sections 2.2 and 2.3.

SECTION 12.2 APPLICABILITY OF ARTICLE.

Redemption of Securities at the election of the Company, as permitted or required by any provision of the Securities or this Indenture, shall be made in accordance with such provision and this Article XII.

SECTION 12.3 ELECTION TO REDEEM; NOTICE TO TRUSTEE.

The election of the Company to redeem any Securities shall be evidenced by a Board Resolution. In the case of any redemption at the election of the Company of all of the Securities, the Company shall, at least 45 but not more than 75 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date. If the Securities are to be redeemed pursuant to an election of the Company which is subject to a condition specified in the forms of Securities set forth in Section 2.2, the Company shall furnish the Trustee with (a) an Officers' Certificate stating that the Company is entitled to effect such redemption and setting forth a statement of facts

demonstrating the same and (b) an Opinion of Counsel to the effect that the Company is entitled to effect such redemption, and such redemption is not otherwise in violation of any provisions of Senior Debt.

SECTION 12.4 SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED.

If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected by the Trustee within three Business Days after it receives the notice described in 12.3, from the Outstanding Securities not previously called for redemption, by such method as the Trustee may deem fair and appropriate.

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

The Trustee shall promptly notify the Company and each Security Registrar in writing of the securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount and certificate numbers thereof to be redeemed.

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

SECTION 12.5 NOTICE OF REDEMPTION.

Notice of redemption shall be given in the manner provided in Section 1.6 to the Holders of Securities to be redeemed. Notice shall be given at least once not less than 30 nor more than 60 days prior to the Redemption Date.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price, and the amount of accrued interest, if any,
- (3) if less than all Outstanding Securities are to be redeemed, the aggregate principal amount of the Securities to be redeemed;

(4) that on the Redemption Date, the Redemption Price, and accrued interest, if any, will become due and payable upon each Security to be redeemed, and that interest thereon shall cease to accrue on and after said date,

(5) the Conversion Rate, the date on which the right to convert the Securities will terminate and the places where the Securities may be surrendered for conversion,

(6) the name and address of the Paying Agent,

(7) that the Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price, and

(8) the place or places where the Securities are to be surrendered for payment of the Redemption Price and accrued interest, if any.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name of and at the expense of the Company, and such notice, when given to the Holders, shall be irrevocable.

SECTION 12.6 DEPOSIT OF REDEMPTION PRICE.

On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as Paying Agent, segregate and hold in trust as provided in Section 11.3) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date other than any Securities called for redemption on that date which have been converted prior to the date of such deposit.

If any Security called for redemption is converted, any money deposited with the Trustee or with a Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 3.7) be paid to the Company on Company Request or, if then held by the Company, shall be discharged from such trust.

SECTION 12.7 SECURITIES PAYABLE ON REDEMPTION DATE.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price herein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, the Holder of such Security shall be paid the Redemption Price, together with accrued interest to the Redemption Date; PROVIDED, HOWEVER, that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.7.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal of, premium, if any, and, to the extent permitted by applicable law, accrued interest on such Security shall, until paid, bear interest from the Redemption Date at the rate of interest borne by the Security and such Security shall remain convertible until the principal of such Security (or portion thereof, as the case may be) shall have been paid or duly provided for.

ARTICLE XIII

CONVERSION OF SECURITIES

SECTION 13.1 CONVERSION PRIVILEGE AND CONVERSION RATE.

Subject to and upon compliance with the provisions of this Article, at the option of the Holder thereof, any Security or any portion of the principal amount thereof which is \$1,000 or any integral multiple of \$1,000 in excess thereof, may be converted at any time following the last original issue date of the Securities at the principal amount thereof, or of such portion thereof, into fully paid and nonassessable Common Stock of the Company (calculated as to each conversion to the nearest 1/100 of a share) at the Conversion Rate, determined as hereinafter provided, in effect at the time of conversion. Such conversion right shall expire at the close of business on June 15, 2005; subject, in the case of conversion of a Global Security, to any applicable book-entry procedures of the Depositary for such conversion. In case a Security or portion thereof is called for redemption at the election of the Company or is delivered for repurchase at the option of the Holder, such conversion right in respect of the Security or portion thereof so called shall expire at the close of business on the fifth Trading Day preceding the Redemption Date or the second Trading Day preceding the Repurchase Date, unless the Company

defaults in making the payment due upon redemption or the repurchase, as the case may be (subject as aforesaid to any applicable book-entry procedures).

The rate at which shares of Common Stock shall be delivered upon conversion (herein called the "Conversion Rate") shall be initially 18.8791 shares of Common Stock for each \$1,000 principal amount of Securities. The Conversion Rate shall be adjusted in certain instances as provided in this Article XIII. The price at which shares of Common Stock shall be delivered upon conversion (herein called the "Conversion Price") shall at any time be equal to \$1,000 divided by the then applicable Conversion Rate (and rounded to the nearest cent).

SECTION 13.2 EXERCISE OF CONVERSION PRIVILEGE.

In order to exercise the conversion privilege with respect to any Security or portion thereof, the Holder of any Security to be converted or any other person acting on its behalf shall surrender such Security, duly endorsed or assigned to the Company or in blank at any office or agency of the Company maintained for that purpose pursuant to Section 11.2, accompanied by a duly signed conversion notice substantially in the form set forth in Annex A stating that the Holder elects to convert such Security or, if less than the entire principal amount thereof is to be converted, the portion thereof to be converted. Alternatively, if such security is represented by a Global Security, conversion may be effected by written order given to the Trustee in accordance with the applicable procedures of the Depository then in effect. Each Security surrendered for conversion (in whole or in part) during a Record Date Period shall (except in the case of any Security or portion thereof surrendered for conversion for which conversion rights would terminate during such Record Date Period as a result of a call for redemption or a repurchase as provided in Section 13.1) be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest payable on the Interest Payment Date relating to such Record Date Period on the principal amount of such Security being surrendered for conversion, and the interest payable in respect of such Security (including any Security or portion thereof surrendered for conversion for which conversion rights would terminate during such Record Date Period as a result of a call for redemption or a repurchase as provided in Section 13.1) on such Interest Payment Date shall be paid to the Holder of the such Security as of the Regular Record Date relating to such Record Date Period. Interest payable in respect of any Security surrendered for conversion on or after an Interest Payment Date shall be paid to the Holder of such Security as of the next preceding Regular Record Date, notwithstanding the exercise of the right of conversion.

Holders that surrender Securities for conversion on a date that is not an Interest Payment Date will not receive any interest for the period from the Interest Payment Date next preceding the date of conversion to the date of conversion or for any later period, even if the Securities are surrendered after a notice of redemption

(except for the payment of interest on Securities called for redemption on a Redemption Date or to be repurchased on a Repurchase Date, in either case, the result of which would cause the conversion rights of such Security to terminate during such Record Date Period as provided in Section 13.1). No other payment or adjustment for interest, or for any dividends in respect of Common Stock, will be made upon conversion. Holders of shares of Common Stock issued upon conversion will not be entitled to receive any dividends payable to holders of shares of Common Stock as of any record time before the close of business on the conversion date.

Securities shall be deemed to have been converted immediately prior to the close of business on the day of surrender of such Securities for conversion in accordance with the foregoing provisions, and at such time the rights of the Holders of such Securities as Holders shall cease, and the Person or Persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the conversion date, the Company shall issue and deliver, out of its authorized but previously unissued shares of Common Stock, at the office of such Conversion Agent a certificate or certificates for the number of full shares of newly issued Common Stock issuable upon conversion, together with payment in lieu of any fraction of a share, as provided in Section 13.3.

All shares of Common Stock delivered upon such conversion of Restricted Securities shall bear a restrictive legend substantially in the form of the legend required to be set forth on the Restricted Securities pursuant to Section 2.2 and shall be subject to the restrictions on transfer provided in such legend. Neither the Trustee nor any agent maintained for the purpose of such conversion shall have any responsibility for the inclusion or content of any such restrictive legend on such Common Stock; PROVIDED, HOWEVER, that the Trustee or any agent maintained for the purpose of such conversion shall have provided, to the Company or to the Company's transfer agent for such Common Stock, prior to or concurrently with a request to the Company to deliver to such agent maintained for the purpose of such conversion certificates for such Common Stock, written notice that the Securities delivered for conversion are Restricted Securities.

In the case of any Security which is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities of authorized denominations in an aggregate principal amount equal to the unconverted portion of the principal amount of such Security. A Security may be converted in part, but only if the principal amount of such Security to be converted is any integral multiple of \$1,000 and the principal amount of such security to remain outstanding after such conversion is equal to \$1,000 or any integral multiple of \$1,000 in excess thereof.

If shares of Common Stock to be issued upon conversion of a Security, or Securities to be issued upon conversion of a Security in part only, are to be registered in a name other than that of the Holder of such Security, the Security Registrar shall, prior to the conversion of such Security, record in the Security Register the transfer of that portion of the Security to be so converted in the name of the person in whose name such Common Stock or Securities are to be registered.

SECTION 13.3 FRACTIONS OF SHARES OF COMMON STOCK.

No fractional shares of Common Stock or scrip certificates in respect thereof shall be issued upon conversion of any Security or 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 thereof shall be computed on the basis of the aggregate principal amount of the Securities so surrendered. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any Security or Securities, the Company shall pay a cash adjustment in respect of such fraction (calculated to the nearest 1/100 of a share) in an amount in Dollars equal to the same fraction of the current market price per Common Share (calculated in accordance with Section 13.4(8) below) at the close of business on the day of conversion, or at the Company's option, the Company shall round up the conversion transaction to the next higher whole share.

SECTION 13.4 ADJUSTMENT OF CONVERSION RATE.

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

(1) In case at any time after the date hereof, the Company shall pay or make a dividend or other distribution on any class of capital stock of the Company payable in shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such dividend or other distribution shall be increased by dividing such Conversion Rate by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. If, after any such date fixed for determination, any dividend or distribution is not in fact paid, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would have been in effect if such determination date had not been fixed. For the purposes of this paragraph (1), the number of shares of

Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates, if any, issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(2) In case at any time after the date hereof, the Company shall issue rights, warrants or options to all holders of its Common Stock entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share (determined as provided in paragraph (8) of this Section 13.4) of the Common Stock on the date fixed for the determination of shareholders entitled to receive such rights, warrants or options, the Conversion Rate in effect at the opening of business on the day following the date fixed for such determination shall be increased by dividing such Conversion Rate by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription or purchase would purchase at such current market price and the denominator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase, such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purposes of this paragraph (2), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but will include shares issuable in respect of scrip certificates, if any, issued in lieu of fractions of shares of Common Stock. The Company will not issue any rights or warrants in respect of shares of Common Stock held in the treasury of the Company.

(3) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and, conversely in case outstanding shares of Common Stock shall each be combined into a smaller number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(4) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock evidences of its indebtedness, shares of capital stock, or assets (including securities, but excluding any rights, warrants or options referred to in paragraph (2) of this Section 13.4, any dividend or distribution paid exclusively in cash, any dividend or distribution referred to in paragraph (1) of this Section 13.4 and any merger or consolidation to which Section 13.11 applies), the Conversion Rate shall be adjusted so that the same shall equal the rate determined by dividing the Conversion Rate in effect immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such distribution by a fraction of which the numerator shall be the current market price per share (determined as provided in paragraph (8) of this Section 13.4) of the Common Stock on the date fixed for such determination less the then fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution filed with the Trustee) of the portion of the assets, shares or evidences of indebtedness so distributed applicable to one share of Common Stock and the denominator shall be such current market price per share of Common Stock, such adjustment to become effective immediately prior to the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such distribution. Notwithstanding the foregoing, in the event that the Company shall distribute rights or warrants (other than those referred to in paragraph (2) of this Section) ("Rights") pro rata to holders of Common Stock, including any such Rights that the Company has distributed pursuant to the Rights Agreement, dated as of March 12, 1998 between the Company and American Stock Transfer & Trust Company, as Rights Agent, the Company shall make proper provision so that each Holder of a Security who converts such Security (or any portion thereof) after the record date for such distribution and prior to the expiration or redemption of the Rights shall be entitled to receive upon such conversion, in addition to the shares of Common Stock issuable upon such conversion (the "Conversion Shares"), a number of Rights to be determined as follows: (i) if such conversion occurs on or prior to the date for the distribution to the holders of Rights of separate certificates evidencing such Rights (the "Distribution Date"), the same number of Rights to which a holder of a number of shares of Common Stock equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions of and applicable to the Rights; and (ii) if such conversion occurs after the Distribution Date, the same number of Rights to which a holder of the number of shares of Common Stock into which the principal amount of the Security so converted was convertible immediately prior to the Distribution Date would have been entitled on the Distribution Date in accordance with the terms and provisions of and applicable to the Rights; PROVIDED, HOWEVER, that if after the Distribution Date with respect to such Rights converting Holders of Securities are not entitled to receive the Rights

that would otherwise be attributable (but for the date of conversion) to their respective Conversion Shares or such Rights are not issued to them upon conversion for any reason, then adjustment of the Conversion Price shall be made under this paragraph except the Distribution Date with respect to such Rights shall be substituted as "the date fixed for the determination of stockholders entitled to receive such distribution" and "the date fixed for such determination"; PROVIDED, FURTHER, that if such an adjustment is made and such Rights are later redeemed, invalidated or terminated, then a corresponding reversing adjustment of the Conversion Price shall be made to the Conversion Price, on an equitable basis, to take account of such event.

(5) In case the Company shall, by dividend or otherwise, make a distribution to all holders of its Common Stock consisting exclusively of cash (excluding any cash that is distributed upon a merger or consolidation or a sale or transfer of all or substantially all of the assets of the Company to which Section 13.11 applies or as part of a distribution referred to in paragraph (4) of this Section 13.4) in an aggregate amount that, combined together with (I) the aggregate amount of any other distributions to all holders of its Common Stock made exclusively in cash within the 12 months preceding the date of payment of such distribution and in respect of which no adjustment pursuant to this paragraph (5) has been made and (II) the aggregate of any cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution filed with the Trustee) of consideration payable in respect of any tender offer by the Company or any of its Subsidiaries for all or any portion of the Common Stock concluded within the 12 months preceding the date of payment of such distribution and in respect of which no adjustment pursuant to paragraph (6) of this Section 13.4 has been made, exceeds 10% of the product of the current market price per share of the Common Stock on the date for the determination of holders of shares of Common Stock entitled to receive such distribution times the number of shares of Common Stock outstanding on such date (the "aggregate current market price"), then, and in each such case, immediately after the close of business on such date for determination, the Conversion Rate shall be increased so that the same shall equal the rate determined by dividing the Conversion Rate in effect immediately prior to the close of business on the date fixed for determination of the shareholders entitled to receive such distribution by a fraction (i) the numerator of which shall be equal to the current market price per share (determined as provided in paragraph (8) of this Section 13.4) of the Common Stock on the date fixed for such determination less an amount equal to the quotient of (x) the excess of such combined cash tender amount over such aggregate current market price divided by (y) the number of shares of Common Stock outstanding on such date for determination and (ii) the denominator of which shall be equal to the

current market price per share (determined as provided in paragraph (8) of this Section 13.4) of the Common Stock on such date for determination.

(6) In case a tender or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to shareholders (based on the acceptance (up to any maximum specified in the terms of the tender offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution filed with the Trustee) that combined together with (I) the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution), as of the expiration of such tender or exchange offer, of consideration payable in respect of any other tender or exchange offer, by the Company or any Subsidiary for all or any portion of the Common Stock expiring within the 12 months preceding the expiration of such tender or exchange offer and in respect of which no adjustment, pursuant to this paragraph (6) has been made and (II) the aggregate amount of any distributions to all holders of the Company's Common Stock within 12 months preceding the expiration of such tender or exchange offer and in respect of which no adjustment pursuant to paragraph (5) of this Section 13.4 has been made (the "combined tender and cash amount") exceeds 10% of the product of the current market price per share of the Common Stock (determined as provided in paragraph (8) of this Section 13.4) as of the last time (the "Expiration Time") tenders or exchanges could have been made pursuant to such tender or exchange offer (as it may be amended) times the number of shares of Common Stock outstanding (including any tendered or exchanged shares) on the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by dividing the Conversion Rate immediately prior to the close of business on the date of the Expiration Time by a fraction (i) the numerator of which shall be equal to (A) the product of (I) the current market price per share of Common Stock (determined as provided in paragraph (8) of this Section 13.4) on the date of the Expiration Time multiplied by (II) the number of shares of Common Stock outstanding (including any tendered or exchanged shares) on the date of the Expiration Time less (B) the combined tender and cash amount, and (ii) the denominator of which shall be equal to the product of (A) the current market price per share of the Common Stock (determined as provided in paragraph (8) of this Section 13.4) as of the Expiration Time multiplied by (B) the number of shares of Common Stock outstanding (including any tendered or exchanged shares) as of the Expiration Time less the number 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").

(7) The reclassification of Common Stock into securities other than Common Stock (other than any reclassification upon a consolidation or merger to which Section 13.11 applies) shall be deemed to involve (a) a distribution of such securities other than Common Stock to all holders of Common Stock (and the effective date of such reclassification shall be deemed to be "the date fixed for the determination of shareholders entitled to receive such distribution" and "the date fixed for such determination" within the meaning of paragraph (4) of this Section 13.4), and (b) a subdivision or combination, as the case may be, of the number of shares of Common Stock outstanding immediately prior to such reclassification into the number of shares of Common Stock outstanding immediately thereafter (and the effective date of such reclassification shall be deemed to be "the day upon which such subdivision becomes effective" or "the day upon which such combination becomes effective," as the case may be, and "the day upon which such subdivision or combination becomes effective" within the meaning of paragraph (3) of this Section 13.4).

(8) For the purpose of any computation under paragraphs (2), (4), (5) or (6) of this Section 13.4, the current market price per share of Common Stock on any date shall be deemed to be the average of the daily Closing Prices Per Share for the five consecutive Trading Days selected by the Company commencing not more than 10 Trading Days before, and ending not later than, the earlier of the day in question and the day before the "ex date" with respect to the issuance or distribution requiring such computation. For purposes of this paragraph, the term "ex date," when used with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the applicable securities exchange or in the applicable securities market without the right to receive such issuance or distribution.

(9) No adjustment in the Conversion Rate shall be required unless such adjustment (plus any adjustments not previously made by reason of this paragraph (9)) would require an increase or decrease of at least one percent in such rate; PROVIDED, HOWEVER, that any adjustments which by reason of this paragraph (9) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be.

(10) The Company may make such increases in the Conversion Rate, for the remaining term of the Securities or any shorter term, in addition to those required by paragraphs (1), (2), (3), (4), (5) and (6) of this Section 13.4, as it considers to be advisable in order to avoid or diminish any income tax to

any holders of shares of Common Stock resulting from any dividend or distribution of stock or issuance of rights or warrants to purchase or subscribe for stock or from any event treated as such for United States federal income tax purposes or for any other reasons. The Company shall have the power to resolve any ambiguity or correct any error in this paragraph (10) and its actions in so doing, absent manifest error, shall be final and conclusive.

(11) To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least twenty (20) days, the increase is irrevocable during such period, and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive; PROVIDED, HOWEVER, that no such increase shall be taken into account for purposes of determining whether the Closing Price Per Share of the Common Stock exceeds the Conversion Price by 105% in connection with an event which would otherwise be a Change of Control pursuant to Section 15.4. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall give notice of the increase to the Holders in the manner provided in Section 1.6 at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

SECTION 13.5 NOTICE OF ADJUSTMENTS OF CONVERSION RATE.

Whenever the Conversion Rate is adjusted as herein provided:

(1) the Company shall compute the adjusted Conversion Rate in accordance with Section 13.4 and shall prepare a certificate signed by the Chief Financial Officer of the Company setting forth the adjusted Conversion Rate and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith promptly be filed with the Trustee and with each Conversion Agent; and

(2) a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate shall forthwith be prepared, and as soon as practicable after it is prepared, such notice shall be provided by the Company to all Holders in accordance with Section 1.6.

Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate or the information and calculations contained therein, except to exhibit the same to any Holder of Securities desiring inspection thereof at its office during normal business hours.

SECTION 13.6 NOTICE OF CERTAIN CORPORATE ACTION.

In case:

(1) the Company shall declare a dividend (or any other distribution) on its Common Stock payable (i) otherwise than exclusively in cash or (ii) exclusively in cash in an amount that would require an adjustment pursuant to Section 13.4; or

(2) the Company shall authorize the granting to the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any shares of capital stock of any class or of any other rights; or

(3) of any reclassification of the Common Stock of the Company, or of any consolidation, merger or share exchange to which approval of any shareholders of the Company is required, or of the conveyance, transfer, sale or lease of all or substantially all of the assets of the Company; or

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

then the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of Securities pursuant to Section 11.2, and shall cause to be provided to all Holders in accordance with Section 1.6, at least 20 days (or 10 days in any case specified in clause (1) OR (2) above) prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, rights, options or warrants, or, if a record is not to be taken, the effective date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights, options or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, share exchange, conveyance, transfer, sale, lease, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, share exchange, conveyance, transfer, sale, lease, dissolution, liquidation or winding up. Neither the failure to give such notice or the notice referred to in the following paragraph nor any defect therein shall affect the legality or validity of the proceedings described in clauses (1) through (4) of this Section 13.6. If at the time the Trustee shall not be the Conversion Agent, a copy of such notice and any notice referred to in the following paragraph shall also forthwith be filed by the Company with the Trustee.

The Company shall cause to be filed at each office or agency maintained for the purpose of conversion of Securities pursuant to Section 11.2, and shall cause to be provided to all Holders in accordance with Section 1.6, notice of any tender offer by the Company or any Subsidiary for all or any portion of the Common Stock at or about the time that such notice of tender offer is provided to the public generally.

SECTION 13.7 COMPANY TO RESERVE COMMON STOCK.

The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but previously unissued Common Stock, for the purpose of effecting the conversion of Securities, the full number of shares of Common Stock then issuable upon the conversion of all such Outstanding Securities.

SECTION 13.8 TAXES ON CONVERSIONS.

Except as provided in the next sentence, the Company will pay any and all transfer, stamp, documentary and other similar taxes and duties that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Securities pursuant hereto. A Holder delivering a Security for conversion will be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Security or Securities to be converted, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax or duty or has established to the satisfaction of the Company that such tax or duty has been paid.

SECTION 13.9 COVENANT AS TO COMMON STOCK.

The Company covenants that all shares of Common Stock which may be delivered upon conversion of Securities will be newly issued shares, upon such delivery, will have been duly authorized and validly issued and will be fully paid and nonassessable and, except as provided in Section 13.8, the Company will pay all taxes, liens and charges with respect to the issue thereof.

SECTION 13.10 CANCELLATION OF CONVERTED SECURITIES.

All Securities delivered for conversion shall be delivered to the Trustee to be canceled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 3.9.

SECTION 13.11 PROVISION IN CASE OF CONSOLIDATION, MERGER OR CONVEYANCE OF ASSETS.

In case of any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company) or any conveyance, sale, transfer or lease of all or substantially all of the assets of the Company, the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture executed in accordance with Article IX providing that the Holder of such Security then Outstanding shall have the right thereafter, during the period such Security shall be convertible as specified in Section 13.1, to convert such Security only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease by a holder of the number of shares of Common Stock of the Company into which such Security might have been converted immediately prior to such consolidation, merger, conveyance, sale, transfer or lease assuming such holder of Common Stock of the Company (i) is not a Person with which the Company consolidated or merged with or which merged into or with the Company or to which such conveyance, sale, transfer or lease was made, as the case may be ("Constituent Person"), or an Affiliate of a Constituent Person and (ii) failed to exercise its rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease (provided that if the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease is not the same for each share of Common Stock of the Company held immediately prior to such consolidation, merger, conveyance, sale, transfer or lease by other than a Constituent Person or an Affiliate thereof and in respect of which such rights of election shall not have been exercised ("Non-Electing Share"), then for the purpose of this Section 13.11 the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease by the holders of each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). Such supplemental indenture shall provide for adjustments which, for events subsequent to the effective date of such supplemental indenture, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article. The above provisions of this Section 13.11 shall similarly apply to successive consolidations, mergers, conveyances, sales, transfers or leases. Notice of the execution of such a supplemental indenture shall be given by the Company to the Holder of each Security as provided in Section 1.6 promptly upon such execution.

Neither the Trustee, any Paying Agent nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any such supplemental indenture relating either to the kind or amount of shares of

stock or other securities or property or cash receivable by Holders of Securities upon the conversion of their Securities after any such consolidation, merger, conveyance, sale, transfer or lease or to any such adjustment, but may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Opinion of Counsel with respect thereto, which the Company shall cause to be furnished to the Trustee upon request.

SECTION 13.12 RESPONSIBILITY OF TRUSTEE FOR CONVERSION PROVISIONS.

The Trustee, subject to the provisions of Section 6.1, and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Securities to determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature, extent or amount of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same, or whether a supplemental indenture need be entered into. Neither the Trustee, subject to the provisions of Section 6.1, nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any other securities or property or cash, which may at any time be issued or delivered upon the conversion of any Security; and it or they do not make any representation with respect thereto. Neither the Trustee, subject to the provisions of Section 6.1, nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of Common Stock or share certificates or other securities or property or cash upon the surrender of any Security for the purpose of conversion; and the Trustee, subject to the provisions of Section 6.1, and any Conversion Agent shall not be responsible for any failure of the Company to comply with any of the covenants of the Company contained in this Article.

ARTICLE XIV

SUBORDINATION

SECTION 14.1 SECURITIES SUBORDINATE TO SENIOR DEBT.

The Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article (subject to the provisions of Article IV), the indebtedness represented by the Securities, and the payment of the principal of, interest on and all other amounts, if any, owing with respect to each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full in cash or other immediately available funds of all Senior Debt of the Company.

SECTION 14.2 PAYMENT OVER OF PROCEEDS UPON DISSOLUTION, ETC.

In the event of (a) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to the Company or to its creditors, as such, or to its assets, or (b) any liquidation, dissolution or other winding up of the Company, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (c) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Company, then and in any such event specified in (a), (b) or (c) above (each such event, if any, herein sometimes referred to as a "Proceeding") the holders of Senior Debt shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Debt, in cash before the Holders of the Securities are entitled to receive any payment on account of principal of, premium, if any, or interest (including Liquidated Damages) on the Securities or on account of the purchase, redemption or other acquisition of Securities by the Company or any Subsidiary of the Company, and to that end the holders of all Senior Debt shall be entitled to receive, for application to the payment thereof, any payment or distribution of any kind or character, whether in cash, property or securities, which may be payable or deliverable in respect of the Securities in any such Proceeding.

In the event that, notwithstanding the foregoing provisions of this Section, the Trustee or the Holder of any Security shall have received any payment or distribution of assets of the Company of any kind or character, whether in cash, securities or other property, before all Senior Debt is paid in full, and if such fact shall, at or prior to the time of such payment or distribution, have been made known to a Responsible Officer of the Trustee or, as the case may be, such Holder, then and in such event such payment or distribution shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Company for application to the payment of all Senior Debt, to the extent necessary to pay all Senior Debt in full, after giving effect to any concurrent payment or distribution to or for the holders of Senior Debt.

For purposes of this Article only, the words "any payment or distribution of any kind or character, whether in cash, property or securities" shall not be deemed to include a payment or distribution of stock or securities of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment which shares of stock or securities are subordinated in right of payment to all then outstanding Senior Debt to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance, transfer, sale or lease of all or substantially

all of its properties and assets to another Person upon the terms and conditions set forth in Article VIII shall not be deemed a Proceeding for the purposes of this Section if the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance, transfer, sale or lease such properties and assets, as the case may be, shall, as a part of such consolidation, merger, conveyance, transfer, sale or lease comply with the conditions set forth in Article VIII.

SECTION 14.3 NO PAYMENT WHEN SENIOR DEBT IN DEFAULT.

In the event that any Securities are declared or otherwise shall become due and payable before their Stated Maturity, then and in such event the holders of the Senior Debt outstanding at the time such Securities so become due and payable shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Debt in cash or other immediately available funds or otherwise in a manner satisfactory to the holders of such Senior Debt, before the Holders of the Securities are entitled to receive any payment by the Company on account of the principal of, premium, if any, or interest (including Liquidated Damages) on the Securities or on account of the redemption, repurchase or other acquisition of the Securities.

In the event and during the continuation of any default in the payment of any amount owing in respect of any Senior Debt beyond any applicable grace period with respect thereto, or in the event that any event of default with respect to any Senior Debt shall have occurred and be continuing permitting the holders of such Senior Debt (or a trustee or other representative on behalf of the holders thereof) to declare such Senior Debt due and payable prior to the date on which it would otherwise have become due and payable, unless and until such event of default shall have been cured or waived or shall have ceased to exist and such acceleration shall have been rescinded or annulled, or in the event any judicial proceeding shall be pending with respect to any such default in payment or event of default, then no payment shall be made by the Company on account of principal of, premium, if any, or interest (including Liquidated Damages) on the Securities, or on account of the purchase, redemption or other acquisition of the Securities.

In the event that, notwithstanding the foregoing provisions of this Section, the Trustee or the Holder of any Security shall have received any payment or distribution of assets of the Company of any kind or character, whether in cash, securities or other property, before all Senior Debt is paid in full, and if such fact shall, at or prior to the time of such payment or distribution, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment or distribution shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Company for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all Senior Debt in

full, after giving effect to any concurrent payment or distribution to or for the holder of Senior Debt.

The provisions of this Section shall not apply to any payment with respect to which Section 14.2 would be applicable.

SECTION 14.4 PAYMENT PERMITTED IF NO DEFAULT.

Nothing contained in this Article or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time except during the pendency of any proceeding referred to in Section 14.2 or under the conditions described in Section 14.3, from making payments at any time of principal of, premium, if any, or interest (including Liquidated Damages) on the Securities, or (b) the application by the Trustee of any money deposited with it hereunder to the payment of or on account of the principal of, premium, if any, or interest (including Liquidated Damages) on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge that such payment would have been prohibited by the provisions of this Article.

SECTION 14.5 SUBROGATION TO RIGHTS OF HOLDERS OF SENIOR DEBT.

Subject to the payment in full of all Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article, to the rights of the holders of such Senior Debt to receive payments and distributions of cash, property and securities applicable to the Senior Debt until the principal of, premium, if any, and interest (including Liquidated Damages) on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt 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, and no payments over pursuant to the provisions of this Article to the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

SECTION 14.6 PROVISIONS SOLELY TO DEFINE RELATIVE RIGHTS.

The provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as among the Company, the creditors of the Company other than holders of Senior Debt and the Holders of the Securities, the obligation of the Company, which is absolute

and unconditional to pay to the Holders of the Securities the principal of, premium, if any, and interest (including Liquidated Damages) on the Securities as and when the same shall become due and payable in accordance with their terms; or (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than the holders of Senior Debt; or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 14.7 TRUSTEE TO EFFECTUATE SUBORDINATION.

Each Holder of a Security by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee his attorney-in-fact for any and all such purposes.

SECTION 14.8 NO WAIVER OF SUBORDINATION PROVISIONS.

No right of any present or future holder of any Senior Debt 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 any such holder may have or be otherwise charged with.

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

SECTION 14.9 NOTICE TO TRUSTEE.

The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee therefor or representative thereof; and, prior to the receipt of any such written notice, the Trustee shall be entitled in all respects to assume that no such facts exist; PROVIDED, HOWEVER, that if the Trustee shall not have received the notice provided for in this Section at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of, the principal of or interest on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it within two Business Days prior to such date. The Trustee shall not be charged with knowledge of the curing of any such default or the elimination of the act or condition preventing any such payment unless and until the Trustee shall have received an Officer's Certificate to such effect.

Subject to the provisions of Section 6.1, the Trustee shall be entitled to rely on the delivery to it of a written notice, by a Person representing itself to be a holder of Senior Debt (or a trustee therefor or representative thereof) to establish that such notice has been given by a holder of Senior Debt (or a trustee therefor or representative thereof). 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 Debt to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt 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, 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 14.10 RELIANCE ON JUDICIAL ORDER OR CERTIFICATE OF LIQUIDATING AGENT.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 6.1, and the Holders of the Securities shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the

trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

SECTION 14.11 TRUSTEE NOT FIDUCIARY FOR HOLDERS OF SENIOR DEBT.

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if it shall in good faith, mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article or otherwise. 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, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee.

SECTION 14.12 RIGHTS OF TRUSTEE AS HOLDER OF SENIOR DEBT; PRESERVATION OF TRUSTEE'S RIGHTS.

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

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.7.

SECTION 14.13 ARTICLE APPLICABLE TO PAYING AGENTS.

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; PROVIDED, HOWEVER, that Section 14.12 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

SECTION 14.14 PAYMENT.

For the purposes of this Article only, (1) the issuance and delivery of junior securities upon conversion of Securities in accordance with Article XIII or upon the repurchase of Securities in accordance with Article XV shall not be deemed to constitute a payment or distribution on account of the principal of, premium, if any, or interest on Securities or on account of the purchase or other acquisition of Securities, and (2) the payment, issuance or delivery of cash, property or securities (other than junior securities) upon conversion of a Security shall be deemed to constitute payment on account of the principal of, premium, if any, or interest on such Security. For the purposes of this Section, the term "junior securities" means (a) shares of any stock of any class of the Company and any cash, property or securities into which the Securities are convertible pursuant to Article XIII and (b) securities of the Company which are subordinated in right of payment to all Senior Debt 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 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 Debt and the Holders of the Securities, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article XIII or to exchange such Security for Common Stock in accordance with Article XV if the Company elects to satisfy the obligations under Article XV by the delivery of Common Stock.

ARTICLE XV

REPURCHASE OF SECURITIES AT THE OPTION OF
THE HOLDER UPON A CHANGE OF CONTROL

SECTION 15.1 RIGHT TO REQUIRE REPURCHASE.

In the event that a Change of Control shall occur, then each Holder shall have the right, at the Holder's option, but subject to the provisions of Section 15.3, to require the Company to repurchase, and upon the exercise of such right the Company shall repurchase, all of such Holder's Securities, or any portion of the principal amount thereof that is equal to \$1,000 or any integral multiple of \$1,000 in excess thereof, on the date (the "Repurchase Date") that is 45 days after the date of the Company Notice (as defined in Section 15.3) at a purchase price equal to 100% of the principal amount of the Securities to be repurchased plus interest accrued to the Repurchase Date (the "Repurchase Price"); PROVIDED, HOWEVER, that installments of interest on Securities whose Stated Maturity is on or prior to the Repurchase Date shall be payable, in cash, to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to

their terms and the provisions of Section 3.7. Such right to require the repurchase of the Securities shall not continue after a discharge of the Company from its obligations with respect to the Securities in accordance with Article IV, unless a Change of Control shall have occurred prior to such discharge. At the option of the Company, the Repurchase Price may be paid in cash or, subject to the fulfillment by the Company of the conditions set forth in Section 15.2, by delivery of shares of Common Stock having a fair market value equal to the Repurchase Price. Whenever in this Indenture there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price payable in respect of such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Indenture shall not be construed as excluding the Repurchase Price in those provisions of this Indenture when such express mention is not made; PROVIDED that for purposes of Article XIV, such reference shall be deemed to include reference to the Repurchase Price only to the extent the Repurchase Price is payable in cash.

SECTION 15.2 CONDITIONS TO THE COMPANY'S ELECTION TO PAY THE REPURCHASE PRICE IN COMMON STOCK.

The Company may elect to pay the Repurchase Price by delivery of shares of Common Stock pursuant to Section 15.1 if and only if the following conditions shall have been satisfied:

(a) The shares of Common Stock deliverable in payment of the Repurchase Price shall have a fair market value as of the Repurchase Date of not less than the Repurchase Price. For purposes of Section 15.1 and this Section 15.2, the fair market value of shares of Common Stock shall be determined by the Company and shall be equal to 95% of the average of the Closing Prices Per Share for the five consecutive Trading Days ending on and including the third Trading Day prior to the Repurchase Date;

(b) The Repurchase Price shall be paid only in cash in the event any shares of Common Stock to be issued upon repurchase of Securities hereunder (i) require registration under any federal securities law before such shares may be freely transferrable without being subject to the transfer restrictions under the Securities Act upon repurchase and if such registration is not completed or does not become effective prior to the Repurchase Date, and/or (ii) require registration with or approval of any governmental authority under any state law or any other federal law before such shares may be validly issued or delivered upon repurchase and if such registration is not completed or does not become effective or such approval is not obtained prior to the Repurchase Date;

(c) Payment of the Repurchase Price may not be made in shares of Common Stock unless such stock is, or shall have been, approved for listing on the New York Stock Exchange or listed or quoted on a national securities exchange or quotation system, in either case, prior to the Repurchase Date; and

(d) All shares of Common Stock which may be issued upon repurchase of Securities will be issued out of the Company's authorized but unissued Common Stock and, will upon issuance, be duly and validly issued and fully paid and non-assessable and free of any preemptive rights.

If all of the conditions set forth in this Section 15.2 are not satisfied in accordance with the terms thereof, the Repurchase Price shall be paid by the Company only in cash.

SECTION 15.3 NOTICES; METHOD OF EXERCISING REPURCHASE RIGHT, ETC.

(a) Unless the Company shall have theretofore called for redemption all of the Outstanding Securities, on or before the 30th day after the occurrence of a Change of Control, the Company or, at the request and expense of the Company on or before the 15th day after such occurrence, the Trustee, shall give to all Holders of Securities, in the manner provided in Section 1.6, notice (the "Company Notice") of the occurrence of the Change of Control and of the repurchase right set forth herein arising as a result thereof. The Company shall also deliver a copy of such notice of a repurchase right to the Trustee.

Each notice of a repurchase right shall state:

- (1) the Repurchase Date,
- (2) the date by which the repurchase right must be exercised,
- (3) the Repurchase Price and whether the Repurchase Price shall be paid by the Company in cash or by delivery of shares of Common Stock,
- (4) a description of the procedure which a Holder must follow to exercise a repurchase right, and the place or places where such Securities are to be surrendered for payment of the Repurchase Price and accrued interest, if any,
- (5) that on the Repurchase Date the Repurchase Price, and accrued interest, if any, will become due and payable upon each such Security designated by the Holder to be repurchased, and that interest thereon shall cease to accrue on and after said date,

(6) the Conversion Rate then in effect, the date on which the right to convert the principal amount of the Securities to be repurchased will terminate and the place or places where such Securities may be surrendered for conversion, and

(7) the place or places that the certificate set forth in Section 2.3 shall be delivered, and the form of such certificate.

No failure of the Company to give the foregoing notices or defect therein shall limit any Holder's right to exercise a repurchase right or affect the validity of the proceedings for the repurchase of Securities.

If any of the foregoing provisions or other provisions of this Article are inconsistent with applicable law, such law shall govern.

(b) To exercise a repurchase right, a Holder shall deliver to the Trustee or any Paying Agent on or before the 30th day after the date of the Company Notice (i) written notice in the form set forth in Section 2.3 of the Holder's exercise of such right, which notice shall set forth the name of the Holder, the principal amount of the Securities to be repurchased (and, if any Security is to be repurchased in part, the serial number thereof, the portion of the principal amount thereof to be repurchased and the name of the Person in which the portion thereof to remain Outstanding after such repurchase is to be registered) and a statement that an election to exercise the repurchase right is being made thereby, and, in the event that the Repurchase Price shall be paid in shares of Common Stock, the name or names (with addresses) in which the certificate or certificates for shares of Common Stock shall be issued, and (ii) the Securities with respect to which the repurchase right is being exercised. Such written notice shall be irrevocable, except that the right of the Holder to convert the Securities with respect to which the repurchase right is being exercised shall continue until the close of business on the Repurchase Date.

(c) In the event a repurchase right shall be exercised in accordance with the terms hereof, the Company shall pay or cause to be paid to the Trustee or the Paying Agent the Repurchase Price in cash or shares of Common Stock, as provided above, for payment to the Holder on the Repurchase Date or, if shares of Common Stock are to be paid, as promptly after the Repurchase Date as practicable, together with accrued and unpaid interest to the Repurchase Date payable with respect to the Securities as to which the purchase right has been exercised; PROVIDED, HOWEVER, that installments of interest that mature on or prior to the Repurchase Date shall be payable in cash, in the case of Securities, to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular Record Date, in each case according to the terms and provisions of Article Three.

(d) If any Security (or portion thereof) surrendered for repurchase shall not be so paid on the Repurchase Date, the principal amount of such Security (or portion thereof, as the case may be) shall, until paid, bear interest to the extent permitted by applicable law from the Repurchase Date at the rate of 5 1/4% per annum, and each Security shall remain convertible into shares of Common Stock until the principal of such Security (or portion thereof, as the case may be) shall have been paid or duly provided for.

(e) Any Security which is to be repurchased only in part shall be surrendered to the Trustee (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 make available for delivery to the Holder of such Security without service charge, a new Security or Securities, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unreurchased portion of the principal of the Security so surrendered.

(f) Any issuance of shares of Common Stock in respect of the Repurchase Price shall be deemed to have been effected immediately prior to the close of business on the Repurchase Date and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such repurchase shall be deemed to have become on the Repurchase Date the holder or holders of record of the shares represented thereby; PROVIDED, HOWEVER, that any surrender for repurchase on a date when the stock transfer books of the Company shall be closed shall constitute the Person or Persons in whose name or names the certificate or certificates for such shares are to be issued as the recordholder or holders thereof for all purposes at the opening of business on the next succeeding day on which such stock transfer books are open. No payment or adjustment shall be made for dividends or distributions on any shares of Common Stock issued upon repurchase of any Security declared prior to the Repurchase Date.

(g) No fractions of shares shall be issued upon repurchase of Securities. If more than one Security shall be repurchased from the same Holder and the Repurchase Price shall be payable in shares of Common Stock, the number of full shares which shall be issuable upon such repurchase shall be computed on the basis of the aggregate principal amount of the Securities so repurchased. Instead of any fractional shares of Common Stock which would otherwise be issuable on the repurchase of any Security or Securities, the Company will deliver to the applicable Holder its check for the current market value of such fractional share. The current market value of a fraction of a share is determined by multiplying the current market price of a full share by the fraction, and rounding the result to the nearest cent. For purposes of this Section, the current market price of a Common Stock is the Closing

Price Per Share of the Common Stock on the last Trading Day prior to the Repurchase Date.

(h) Any issuance and delivery of certificates for shares of Common Stock on repurchase of Securities shall be made without charge to the Holder of Securities being repurchased for such certificates or for any tax or duty in respect of the issuance or delivery of such certificates or the securities represented thereby; PROVIDED, HOWEVER, that the Company shall not be required to pay any tax or duty which may be payable in respect of (i) income of the Holder or (ii) any transfer involved in the issuance or delivery of certificates for shares of Common Stock in a name other than that of the Holder of the Securities being repurchased, and no such issuance or delivery shall be made unless and until the Person requesting such issuance or delivery has paid to the Company the amount of any such tax or duty or has established, to the satisfaction of the Company, that such tax or duty has been paid.

(i) All Securities delivered for repurchase shall be delivered to the Trustee, the Paying Agent or any other agents (as shall be set forth in the Company Notice) to be canceled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 3.9.

SECTION 15.4 CERTAIN DEFINITIONS.

For purposes of this Article XV,

(a) the term "beneficial owner" shall be determined in accordance with Rule 13d-3, as in effect on the date of the original execution of this Indenture, promulgated by the Commission pursuant to the Exchange Act;

(b) a "Change of Control" shall be deemed to have occurred at the time, after the original issuance of the Securities, of:

(i) the acquisition by any Person of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of capital stock of the Company entitling such Person to exercise 50% or more of the total voting power of all shares of capital stock of the Company entitled to vote generally in the election of directors (any shares of voting stock of which such person or group is the beneficial owner that are not then outstanding being deemed outstanding for purposes of calculating such percentage) other than any such acquisition by the Company, any Subsidiary of the Company or any employee benefit plan of the Company; or

(ii) any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company, or any conveyance, sale, transfer or lease of all or substantially all of the assets of the Company to another Person (other than (a) any such transaction (x) which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of capital stock of the Company and (y) pursuant to which the holders of Common Stock immediately prior to such transaction are entitled to exercise, directly or indirectly, 50% or more of the total voting power of all shares of capital stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after such transaction and (b) any merger which is effected solely to change the jurisdiction of incorporation of the Company and results in a reclassification, conversion or exchange of outstanding shares of Common Stock into solely shares of Common Stock);

PROVIDED, HOWEVER, that a Change of Control shall not be deemed to have occurred if the Closing Price Per Share of the Common Stock for any five Trading Days within the period of 10 consecutive Trading Days ending immediately after the later of the date of the Change of Control or the date of the public announcement of the Change of Control (in the case of a Change of Control under Clause (i) above) or the period of 10 consecutive Trading Days ending immediately prior to the date of the Change of Control (in the case of a Change of Control under Clause (ii) above) shall equal or exceed 105% of the Conversion Price in effect on such Trading Day; and

(c) the term "Person" shall include any syndicate or group which would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act, as in effect on the date of the original execution of this Indenture.

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

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

ASPEN TECHNOLOGY, INC.

By /s/ Lawrence Evans

Name: Lawrence Evans
Title: Chairman and Chief Executive Officer

[SEAL]

Attest:

/s/ Stephen J. Doyle

Name: Stephen J. Doyle
Title: Vice President,
General Counsel,
Chief Legal Officer
and Secretary

THE CHASE MANHATTAN BANK,
not in its individual capacity but solely
as Trustee

By /s/ Don Iaccheri

Name: Don Iaccheri
Title: Authorized Signatory

[SEAL]

Attest:

/s/ Mary Lou Bessey

Name: Mary Lou Bessey
Title: Authorized Signer

FORM OF CONVERSION NOTICE

[Notice pursuant to Section 13.2 of the Indenture]

THE CHASE MANHATTAN BANK,
as Conversion Agent
[Address]

Re: ASPEN TECHNOLOGY, INC.
5 1/4% Convertible Subordinated Debentures
due June 15, 2005 (the "Securities")

Reference is hereby made to the Indenture, dated as of June 17, 1998 (the "Indenture"), between Aspen Technology, Inc., as Issuer, and The Chase Manhattan Bank, as Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to the Securities specified below, which are registered in the name of the undersigned (the "Holder"). The Holder hereby irrevocably exercises its right to convert such Securities, or the portion thereof, if any, specified below, into shares of Common Stock and, except to the extent specified or required as described below, directs that certificates representing such shares of Common Shares, together with any check in payment for a fractional share and any Security representing any unconverted principal amount, be issued and delivered through the facilities of the Depositary, for credit to the account(s) of the Person(s) indicated below.

The Holder acknowledges and agrees that no shares of Common Stock will be delivered on conversion until any amount payable by the Holder on account of interest is paid, any certificates evidencing specified Securities not held in book-entry form are duly endorsed or assigned to the Company or in blank and surrendered and

(Continued on next page)

any taxes or other charges or documents required in connection with a transfer on conversion, and any other required items, are delivered to the Conversion Agent.

The Holder acknowledges and agrees that, notwithstanding this request for conversion, the Company may require that the shares of Common Stock delivered on conversion of the specified Securities be delivered in certificated form subject to a restrictive legend, or that additional certifications be delivered on behalf of the relevant beneficial owner(s), if it determines that doing so is necessary to comply with the requirements of the Securities Act or otherwise, as provided in the Indenture.

Conversion of the specified Securities is subject to the requirements established by the Company as well as to the procedures of the Depositary, all as in effect from time to time. The specified Securities will be deemed to have been converted as of the close of business on the first day on which this conversion notice and all other required items have been delivered to the Conversion Agent as provided above and, upon such conversion, shall cease to accrue interest or be Outstanding (subject to the Holder's right to receive the Conversion Securities as provided in the Indenture). Prior to such conversion, the Holder will have no rights in the Conversion Securities.

Please provide the information requested below, as applicable.

1. PLEASE SPECIFY THE SECURITIES HELD AND THE PORTION THEREOF TO BE CONVERTED:

Principal amount held: \$ _____
 CUSIP number(s): _____
 Depositary (DTC) account where held: _____
 Principal amount being converted (if LESS than all): \$ _____

2. UNLESS AND TO THE EXTENT OTHERWISE SPECIFIED BELOW, all Securities (together with any unconverted Securities) will be delivered in book-entry form to the DTC account specified in Item 1 above.

3. IF OTHER ARRANGEMENTS ARE DESIRED, please specify the type, number and form of securities to be delivered on conversion and the name(s) of the account holder(s) or registered owner(s), by checking the appropriate boxes and providing the information requested:

(Continued on next page)

Common Shares

Book-Entry

Number of shares of Common Stock: _____

DTC Account: _____

Certificates

Number of shares of Common Stock: _____

Registered Owner: _____

Unconverted Securities

Certificates

Principal Amount: \$ _____ *

Registered Owner: _____

Book-Entry

Principal Amount: \$ _____

DTC Account: _____

* Aggregate principal amount of each certificate must equal \$1,000 or any amount in excess thereof in integral multiples of \$1,000.

(Continued on next page)

Please sign and date this notice in the space provided below.

DATE:

Name of Holder

Signature(s) of Holder

Title(s):

(If the Holder is a corporation, partnership or fiduciary, the title of the Person signing on behalf of the Holder must be stated.)

Signature(s) must be guaranteed by a commercial bank or trust company or a member firm of a U.S. national securities exchange or a member of the National Association of Securities Dealers, Inc. if shares of Common Stock or unconverted Securities are to be delivered other than to and in the name of the registered owner.

Signature Guarantee

ASPEN TECHNOLOGY, INC.

5 1/4% CONVERTIBLE SUBORDINATED DEBENTURES DUE JUNE 15, 2005

REGISTRATION RIGHTS AGREEMENT

Dated as of
June 17, 1998

Goldman, Sachs & Co.,
NationsBanc Montgomery Securities LLC
William Blair & Company, L.L.C.
c/o Goldman, Sachs & Co.
85 Broad Street
New York, New York 10004

Ladies and Gentlemen:

Aspen Technology, Inc., a Delaware corporation (the "Company"), proposes to issue and sell to the Purchasers (as defined herein) upon the terms set forth in the Purchase Agreement (as defined herein) its 5 1/4% Convertible Subordinated Debentures due June 15, 2005 (the "Securities"). As an inducement to the Purchasers to enter into the Purchase Agreement and in satisfaction of a condition to the obligations of the Purchasers thereunder, the Company agrees with the Purchasers (i) for the benefit of the Purchasers and (ii) for the benefit of the holders (as defined herein) from time to time of the Securities and the common stock, par value \$.10 per share (the "Common Stock"), of the Company, issued upon conversion of the Securities, including the Purchasers, as follows:

1. DEFINITIONS. (a) Capitalized terms used herein without definition shall have the meanings ascribed to them in the Purchase Agreement. As used in this Agreement, the following defined terms shall have the following meanings:

"ACT" or "SECURITIES ACT" means the United States Securities Act of 1933, as amended.

"AFFILIATE" of any specified person means any other person which, directly or indirectly, is in control of, is controlled by, or is under common control with such specified person. For purposes of this definition, control of a person means the power, direct or indirect, to direct or cause the direction of the management and policies of such person whether by contract or

otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"COMMISSION" means the United States Securities and Exchange Commission.

"DTC" means The Depository Trust Company.

"EFFECTIVENESS PERIOD" has the meaning set forth in Section 2(b)(i) hereof.

"EFFECTIVE TIME" means the date on which the Commission declares the Shelf Registration Statement effective or on which the Shelf Registration Statement otherwise becomes effective.

"ELECTING HOLDER" has the meaning set forth in Section 3(a)(3) hereof.

"EXCHANGE ACT" means the United States Securities Exchange Act of 1934, as amended.

"FIRST TIME OF DELIVERY" shall have the meaning set forth in Section 4 of the Purchase Agreement.

The term "HOLDER" means, when used with respect to any Security, the Holder (as defined in the Indenture) and, with respect to any Common Stock, the record holder of such Common Stock.

"INDENTURE" means the Indenture, dated as of June 17, 1998, between the Company and The Chase Manhattan Bank, as amended and supplemented from time to time in accordance with its terms.

"MANAGING UNDERWRITERS" means the investment banker or investment bankers and manager or managers that shall administer an underwritten offering, if any, conducted pursuant to Section 6 hereof.

"NASD" means the National Association of Securities Dealers, Inc.

"NASD RULES" means the Rules of the NASD, as amended from time to time.

"NOTICE AND QUESTIONNAIRE" means a Notice of Registration Statement and Selling Securityholder Questionnaire substantially in the form of Exhibit A hereto.

"PERSON" means an individual, partnership, corporation, trust or unincorporated organization, or government or agency or political subdivision thereof.

"PROSPECTUS" means the prospectus included in the Shelf Registration Statement (including, without limitation, the preliminary prospectus, and final prospectus and any prospectus that

discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Shelf Registration Statement and by all other amendments and supplements to such prospectus, including all material incorporated by reference in such prospectus and all documents filed after the date of such prospectus by the Company under the Exchange Act and incorporated by reference therein.

"PURCHASE AGREEMENT" means the purchase agreement, dated June 17, 1998, among the Purchasers and the Company.

"PURCHASERS" means the Purchasers named in Schedule I to the Purchase Agreement.

"REGISTRABLE SECURITIES" means all or any portion of the Securities issued from time to time under the Indenture in registered form and the shares of Common Stock issued or issuable upon conversion of such Securities; PROVIDED, HOWEVER, that a security ceases to be a Registrable Security when it is not longer a Restricted Security.

"RESTRICTED SECURITY" means any Security or share of Common Stock issued or issuable upon conversion thereof except any such Security or share of Common Stock which (i) has been effectively registered under the Securities Act and sold in a manner contemplated by the Shelf Registration Statement, (ii) has been transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or is transferable pursuant to paragraph (k) of such Rule 144 (or any successor provision thereto), or (iii) has otherwise been transferred and a new Security or share of Common Stock not subject to transfer restrictions under the Securities Act has been delivered by or on behalf of the Company in accordance with Section 3.5 of the Indenture.

"RULES AND REGULATIONS" means the published rules and regulations of the Commission promulgated under the Securities Act or the Exchange Act, as in effect at any relevant time.

"SHELF REGISTRATION" means the registration effected pursuant to Section 2 hereof.

"SHELF REGISTRATION STATEMENT" means the shelf registration statement filed with the Commission under the Securities Act providing for the registration of, and the sale on a continuous or delayed basis by the holders of, all of the Registrable Securities pursuant to Rule 415 under the Securities Act and/or any similar rule that may be adopted by the Commission, filed by the Company pursuant to the provisions of Section 2 of this Agreement, including the Prospectus contained therein, any amendments and supplements to the registration statement, including post-effective amendments, and all exhibits and all material incorporated by reference in the registration statement.

"TRUSTEE" means The Chase Manhattan Bank or its successor from time to time under the Indenture.

"TRUST INDENTURE ACT" means the Trust Indenture Act of 1939, or any successor thereto, and the rules, regulations and forms promulgated thereunder, as the same shall be amended from time to time.

The term "UNDERWRITER" means any underwriter of Registrable Securities in connection with an offering thereof under the Shelf Registration Statement.

(b) Wherever there is a reference in this Agreement to a percentage of the "principal amount" of Registrable Securities or to a percentage of Registrable Securities, Common Stock shall be treated as representing the principal amount of Securities which was surrendered for conversion or exchange in order to receive such number of shares of Common Stock.

2. SHELF REGISTRATION. (a) The Company shall, within 90 calendar days following the First Time of Delivery, file with the Commission a Shelf Registration Statement relating to the offer and sale of all Registrable Securities by the holders from time to time in accordance with the methods of distribution elected by such holders and set forth in such Registration Statement and, thereafter, shall use its reasonable best efforts to cause the Shelf Registration Statement to be declared effective under the Act by the Commission as promptly as practicable but no later than 90 calendar days after the date of filing of the Shelf Registration Statement; PROVIDED, HOWEVER, that no holder shall be entitled to be named as a selling securityholder in the Shelf Registration Statement or to use the Prospectus forming a part thereof for resales of Registrable Securities unless such holder is an Electing Holder.

(b) The Company shall use its reasonable best efforts:

(i) To keep the Shelf Registration Statement continuously effective under the Securities Act in order to permit the Prospectus forming part thereof to be usable by holders for resales of Registrable Securities until the second anniversary of the later of (x) the Effective Time of the Shelf Registration Statement and (y) the last Time of Delivery (as defined in the Purchase Agreement), or such shorter period that will terminate when there are no Registrable Securities outstanding (such period being referred to herein as the "Effectiveness Period");

(ii) After the Effective Time of the Shelf Registration Statement, promptly upon the request of any holder of Registrable Securities that is not then an Electing Holder, to take any action reasonably necessary in such time as is reasonably practicable to enable such holder to use the Prospectus forming a part thereof for resales of Registrable Securities, including, without limitation, any action necessary to identify such holder as a selling securityholder in the Shelf Registration Statement; PROVIDED, HOWEVER, that nothing in this subparagraph shall relieve such holder of the obligation to return a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(2) hereof; and

(iii) If at any time the Securities, pursuant to Article XIII of the Indenture, are convertible into securities other than Common Stock, the Company shall, or shall cause any successor under the Indenture to, cause such securities to be included in the Shelf Registration Statement no later than the date on which the Securities may then be convertible into such securities.

The Company shall be deemed not to have used its reasonable best efforts (within the meaning of Section 11.12 of the Indenture) to keep the Shelf Registration Statement effective during the Effectiveness Period if the Company voluntarily takes any action that would result in any Electing Holders not being able to offer and sell any of their Registrable Securities during such period, unless (i) such action is required by applicable law, or (ii) the Company determines based upon the advice of counsel that it is advisable to disclose in the Shelf Registration Statement a financing, acquisition or other corporate transaction, and the Board of Directors of the Company shall have determined in good faith that such disclosure is not in the best interests of the Company and its stockholders, and, in the case of clause (ii) above, the Company thereafter promptly complies with the requirements of Section 3(j) below.

Except as may be permitted in Section 3 hereof, if (i) on or prior to the date 90 days following the First Time of Delivery, the Shelf Registration Statement has not been filed with the Commission, or (ii) on or prior to the date 90 days following the filing of the Shelf Registration Statement, the Shelf Registration Statement has not been declared effective (each, a "Registration Default"), additional interest ("Liquidated Damages") will accrue on the Securities from and including the day following such Registration Default to but excluding the day on which such Registration Default has been cured. Liquidated Damages will be paid semi-annually in arrears, with the first semi-annual payment due on the first Interest Payment Date in respect of the Securities following the date on which such Liquidated Damages begin to accrue, and will accrue at a rate per annum equal to an additional one-quarter of one percent (0.25%) of the principal amount of the Securities to and including the ninetieth day following such Registration Default and at a rate per annum equal to one-half of one percent (0.50%) thereof from and after the ninety-first day following such Registration Default. In the event that the Shelf Registration Statement ceases to be effective during the Effectiveness Period for a period in excess of 60 days, whether or not consecutive, during any 12-month period, then the interest rate borne by the Securities shall increase by an additional one-half of one percent (0.50%) per annum on such sixty-first day to but excluding the earlier of the expiration of the Effectiveness Period or the day on which the Shelf Registration Statement again becomes effective.

3. REGISTRATION PROCEDURES. In connection with the Shelf Registration Statement, the following provisions shall apply:

(a) (1) Not less than 30 calendar days prior to the Effective Time of the Shelf Registration Statement, the Company shall mail the Notice and Questionnaire to the holders of Registrable Securities. No holder shall be entitled to be named as a selling securityholder in the Shelf Registration Statement as of the Effective Time, and no holder

shall be entitled to use the Prospectus forming a part thereof for resales of Registrable Securities at any time, unless such holder has returned a completed and signed Notice and Questionnaire to the Company by the deadline for response set forth therein; PROVIDED, HOWEVER, holders of Registrable Securities shall have at least 25 calendar days from the date on which the Notice and Questionnaire is first mailed by the Company to return a completed and signed Notice and Questionnaire to the Company.

(2) After the Effective Time of the Shelf Registration Statement, the Company shall, upon the request of any holder of Registrable Securities that is not then an Electing Holder, promptly send a Notice and Questionnaire to such holder. After such holder has returned a completed and signed Notice and Questionnaire to the Company, the Company shall promptly take such action as is necessary to name such holder as a selling securityholder in the Shelf Registration Statement and to enable such holder to use the Prospectus forming a part thereof for resales of Registrable Securities.

(3) The term "Electing Holder" shall mean any holder of Registrable Securities that has returned a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(1) or 3(a)(2) hereof.

(b) The Company shall furnish to each Electing Holder, prior to the Effective Time, a copy of the Shelf Registration Statement initially filed with the Commission, and shall furnish to all Electing Holders, prior to the filing thereof with the Commission, copies of each amendment thereto and each amendment or supplement, if any, to the Prospectus included therein, and shall use its best efforts to reflect in each such document, at the Effective Time or when so filed with the Commission, as the case may be, such comments as such holders and their respective counsel reasonably may propose.

(c) The Company shall promptly take such action as may be necessary so that (i) each of the Shelf Registration Statement and any amendment thereto and the Prospectus forming part thereof and any amendment or supplement thereto (and each report or other document incorporated therein by reference in each case) complies in all material respects with the Securities Act and the Exchange Act and the respective rules and regulations thereunder, (ii) each of the Shelf Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and (iii) each of the Prospectus forming part of the Shelf Registration Statement, and any amendment or supplement to such Prospectus, does not at any time during the Effectiveness Period include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) The Company shall promptly advise each Electing Holder, and shall confirm such advice in writing if so requested by any such holder:

(1) when the Shelf Registration Statement and any amendment thereto has been filed with the Commission and when the Shelf Registration Statement or any post-effective amendment thereto has become effective;

(2) of any request by the Commission for amendments or supplements to the Shelf Registration Statement or the Prospectus included therein or for additional information;

(3) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of any proceedings for such purpose;

(4) of the receipt by the Company of any notification with respect to the suspension of the qualification of the securities included in the Shelf Registration Statement for sale in any jurisdiction or the initiation of any proceeding for such purpose; and

(5) of the happening of any event or the existence of any state of facts that requires the making of any changes in the Shelf Registration Statement or the Prospectus included therein so that, as of such date, the Shelf Registration Statement and the Prospectus comply with the Securities Act and the Exchange Act and the rules and regulations thereunder and otherwise do not contain an untrue statement of a material fact and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading (which advice shall be accompanied by an instruction to such holders to suspend the use of the Prospectus until the requisite changes have been made).

(e) The Company shall use its reasonable best efforts to prevent the issuance, and if issued to obtain the withdrawal, of any order suspending the effectiveness of the Shelf Registration Statement at the earliest possible time.

(f) The Company shall furnish to each Electing Holder, without charge, at least one copy of the Shelf Registration Statement and all post-effective amendments thereto, including financial statements and schedules, and, if such holder so requests in writing, all reports, other documents and exhibits that are filed with or incorporated by reference in the Shelf Registration Statement.

(g) The Company shall, during the Effectiveness Period, deliver to each Electing Holder, without charge, as many copies of the Prospectus (including each preliminary Prospectus) included in the Shelf Registration Statement and any amendment or supplement thereto as such Electing Holder may reasonably request; and the Company consents (except during the continuance of any event described in Section 3(d)(5) above) to the use of the Prospectus and any

amendment or supplement thereto by each of the Electing Holders in connection with the offering and sale of the Registrable Securities covered by the Prospectus and any amendment or supplement thereto during the Effectiveness Period.

(h) Prior to any offering of Registrable Securities pursuant to the Shelf Registration Statement, the Company shall (1) register to qualify or cooperate with the Electing Holders and their respective counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or "blue sky" laws of such jurisdictions within the United States as any Electing Holder may reasonably request, (2) keep such registrations or qualifications in effect and comply with such laws so as to permit the continuance of offers and sales in such jurisdictions for so long as may be necessary to enable any Electing Holder or underwriter, if any, to complete its distribution of Registrable Securities pursuant to the Shelf Registration Statement, and (3) take any and all other actions necessary or advisable to enable the offer and sale in such jurisdictions of such Registrable Securities; PROVIDED, HOWEVER, that in no event shall the Company be obligated to (i) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to so qualify but for this Section 3(h) or (ii) file any general consent to service of process in any jurisdiction where it is not as of the date hereof so subject.

(i) Unless any Registrable Securities shall be in book-entry only form, the Company shall cooperate with the Electing Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to the Shelf Registration Statement, which certificates, if so required by any securities exchange upon which any Registrable Securities are listed, shall be panned, lithographed or engraved, or produced by any combination of such methods, on steel engraved borders, and which certificates shall be free of any restrictive legends and in such permitted denominations and registered in such names as Electing Holders may request in connection with the sale of Registrable Securities pursuant to the Shelf Registration Statement.

(j) Upon the occurrence of any fact or event contemplated by Section 3(d)(5) above, the Company shall promptly prepare a post-effective amendment or supplement to the Shelf Registration Statement or the Prospectus, or any document incorporated therein by reference, or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, the Prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; PROVIDED, HOWEVER, if the Company determines based upon the advice of counsel that it is advisable to disclose in the Shelf Registration Statement a financing, acquisition or other corporate transaction, and the Board of Directors of the Company shall have determined in good faith that such disclosure would not be in the best interests of the Company and its stockholders, the Company shall not be required to prepare and file such amendment, supplement or document for a period not to exceed 30 days. If the Company notifies the Electing Holders of the occurrence of any event contemplated by Section 3(d)(5) above, each Electing Holder agrees, as a consequence of the inclusion of any of

such holder's Registrable Securities in the Shelf Registration Statement, to suspend the use of the Prospectus until the requisite changes to the Prospectus have been made. Promptly upon the earliest of (x) public disclosure of such non-public information, (y) the date on which such non-public information is no longer material and (z) 30 days after the date such notice is given to the Electing Holders, the Company shall supplement or amend the Shelf Registration Statement as required by the immediately preceding sentence and give notice to the Electing Holders that offers and sales under the Registration Statement may be resumed.

(k) Not later than the Effective Time of the Shelf Registration Statement, the Company shall provide a CUSIP number for the Registrable Securities that are debt securities.

(l) The Company shall use its best efforts to comply with all applicable Rules and Regulations, and to make generally available to its securityholders or otherwise provided in accordance with Section 11(a) of the Securities Act as soon as practicable, but in any event not later than eighteen months after (i) the effective date (as defined in Rule 158(c) under the Securities Act) of the Shelf Registration Statement, (ii) the effective date of each post-effective amendment to the Shelf Registration Statement, and (iii) the date of each filing by the Company with the Commission of an Annual Report on Form 10-K that is incorporated by reference in the Shelf Registration Statement, an earnings statement of the Company and its subsidiaries complying with Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158).

(m) Not later than the Effective Time of the Shelf Registration Statement, the Company shall cause the Indenture and the Securities to be qualified under the Trust Indenture Act and, in connection with such qualification, the Company shall cooperate with the Trustee under the Indenture and the Holders (as defined in the Indenture) to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the Trust Indenture Act; and the Company shall execute, and shall use all reasonable efforts to cause the Trustee to execute, all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner. In the event that any such amendment or modification referred to in this Section 3(m) involves the appointment of a new trustee under the Indenture, the Company shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture.

(n) In the event of an underwritten offering conducted pursuant to Section 6 hereof, the Company shall, if requested, promptly include or incorporate in a Prospectus supplement or post-effective amendment to the Shelf Registration Statement such information as the Managing Underwriters reasonably agree should be included therein and to which the Company does not reasonably object and shall make all required filings of such Prospectus supplement or post-effective amendment as soon as practicable after it is notified of the matters to be included or incorporated in such Prospectus supplement or post-effective amendment.

(o) The Company shall enter into such customary agreements (including an underwriting agreement in customary form in the event of an underwritten offering conducted pursuant to Section 6 hereof) and take all other appropriate actions in order to expedite and facilitate the registration and disposition of the Registrable Securities, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain indemnification provisions and procedures substantially identical to those set forth in Section 5 hereof with respect to all parties to be indemnified pursuant to Section 5 hereof.

(p) The Company shall:

(i)(A) make reasonably available for inspection by Electing Holders, any underwriter participating in any disposition pursuant to the Shelf Registration Statement, and one counsel and one accountant to each of the Electing Holders and the underwriters (and any agent other than counsel or an equivalent) designated by or on behalf of the Electing Holders or the underwriters, as the case may be, all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries; and (B) cause the Company's officers, directors and employees to supply all information reasonably requested by such holders or any such underwriter, counsel, accountant or agent in connection with the Shelf Registration Statement, in each case, as is customary for similar due diligence examinations; PROVIDED, HOWEVER, that all records, information and documents that are designated in writing by the Company, in good faith, as confidential shall be kept confidential by such holders and any such underwriter, counsel, accountant or agent, unless such disclosure is made in connection with a court proceeding or required by law, or such records, information or documents become available to the public generally or through a third party without an accompanying obligation of confidentiality; and PROVIDED FURTHER that such inspection and information gathering shall, to the greatest extent possible, be coordinated on behalf of the Electing Holders and the other parties entitled thereto by one counsel designated by and on behalf of Electing Holders or the underwriters, as the case may be.

(ii) in connection with any underwritten offering conducted pursuant to Section 6 hereof, make such representations and warranties to the holders participating in such underwritten offering and to the Managing Underwriters, in form, substance and scope as are customarily made by the Company to underwriters in primary underwritten offerings of equity and convertible debt securities and covering matters including, but not limited to, those set forth in the Purchase Agreement;

(iii) in connection with any underwritten offering conducted pursuant to Section 6 hereof, obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in the form, scope and substance) shall be reasonably satisfactory to the Managing Underwriters) addressed to each holder participating in such underwritten offering and the underwriters, covering such matters as are customarily covered in opinions requested in primary underwritten offerings of equity and convertible

debt securities and such other matters as may be reasonably requested by such holders and underwriters (it being agreed that the matters to be covered by such opinions shall include, without limitation, as of the date of the opinion and as of the Effective Time of the Shelf Registration Statement or the most recent post-effective amendment thereto, as the case may be, the absence from the Shelf Registration Statement and the Prospectus included therein, including the documents incorporated by reference therein, of an untrue statement of a material fact or the omission of a material fact required to be stated therein or necessary to make the statements therein not misleading;

(iv) in connection with any underwritten offering conducted pursuant to Section 6 hereof, obtain "cold comfort" letters and updates thereof from the independent public accountants of the Company (and, if necessary, from the independent public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Shelf Registration Statement), addressed to each holder participating in such underwritten offering (if such holder has provided such letter, representations or documentation, if any, required for such cold comfort letter to be so addressed) and the underwriters, in customary form and covering matters of the type customarily covered in "cold comfort" letters in connection with primary underwritten offerings; and

(v) in connection with any underwritten offering conducted pursuant to Section 6 hereof, deliver such documents and certificates as may be reasonably requested by any holders participating in such underwritten offering and the Managing Underwriters, if any, including, without limitation, certificates to evidence compliance with Section 3(j) hereof and with any conditions contained in the underwriting agreement or other agreements entered into by the Company.

(q) The Company will use its best efforts to cause the Common Stock issuable upon conversion of the Securities to be listed for quotation on the Nasdaq National Market or other stock exchange or trading system on which the Common Stock primarily trades on or prior to the Effective Time of the Shelf Registration Statement hereunder.

(r) In the event that any broker-dealer registered under the Exchange Act shall be an "affiliate" (as defined in Rule 2720(b)(1) of the NASD Rules (or any successor provision thereto)) of the Company or has a "conflict of interest" (as defined in Rule 2720(b)(7) of the NASD Rules (or any successor provision thereto)) and such broker-dealer shall underwrite, participate as a member of an underwriting syndicate or selling group or assist in the distribution of any Registrable Securities covered by the Shelf Registration Statement, whether as a holder of such Registrable Securities or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, the Company shall assist such broker-dealer in complying with the requirements of the NASD Rules, including, without limitation, by (A) engaging a "qualified independent underwriter" (as defined in Rule 2720(b)(15) of the NASD Rules (or any successor provision thereto)) to participate in the preparation of the Shelf Registration Statement relating

to such Registrable Securities, to exercise usual standards of due diligence in respect thereto, and to recommend the public offering price of such Registrable Securities, (B) indemnifying such qualified independent underwriter to the extent of the indemnification of underwriters provided in Section 5 hereof, and (C) providing such information to such broker-dealer as may be required in order for such broker-dealer to comply with the requirements of the NASD Rules.

(s) The Company shall use its reasonable best efforts to take all other steps necessary to effect the registration, offering and sale of the Registrable Securities covered by the Shelf Registration Statement contemplated hereby.

4. REGISTRATION EXPENSES. The Company shall bear all fees and expenses incurred in connection with the performance of its obligations under Sections 2, 3 and 6 hereof. In addition, the Company shall pay the fees and expenses of a single counsel to the Electing Holders, up to a maximum of \$25,000, in connection with the Shelf Registration Statement

5. INDEMNIFICATION AND CONTRIBUTION.

(a) INDEMNIFICATION BY THE COMPANY. Upon the registration of the Registrable Securities pursuant to Section 2 hereof, the Company shall indemnify and hold harmless each Electing Holder and each underwriter, selling agent or other securities professional, if any, which facilitates the disposition of Registrable Securities, and each of their respective officers and directors and each person who controls such Electing Holder, underwriter, selling agent or other securities professional within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each such person being sometimes referred to as an "Indemnified Person") against any losses, claims, damages or liabilities, joint or several, to which such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement under which such Registrable Securities are to be registered under the Securities Act, or any Prospectus contained therein or furnished by the Company to any Indemnified Person, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and the Company hereby agrees to reimburse such Indemnified Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such action or claim as such expenses are incurred; PROVIDED, HOWEVER, that the Company shall not be liable to any such Indemnified Person in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Shelf Registration Statement or Prospectus, or amendment or supplement, in reliance upon and in conformity with written information furnished to the Company by such Indemnified Person expressly for use therein.

(b) INDEMNIFICATION BY THE HOLDERS AND ANY AGENTS AND UNDERWRITERS. Each Electing Holder agrees, as a consequence of the inclusion of any of such holder's Registrable Securities in the Shelf Registration Statement, and each underwriter, selling agent or other securities

professional, if any, which facilitates the disposition of Registrable Securities shall agree, as a consequence of facilitating such disposition of Registrable Securities, severally and not jointly, to (i) indemnify and hold harmless the Company, its directors, officers who sign the Shelf Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which the Company or such other persons may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement or Prospectus, or any amendment or supplement, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such holder, underwriter, selling agent or other securities professional expressly for use therein, and (ii) reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) NOTICES OF CLAIMS, ETC. Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party under such subsection, notify such indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under such subsection. In case any such action shall be brought against any indemnified party and it shall notify an indemnifying party of the commencement thereof, such indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party shall not be liable to such indemnified party under this Section 5 for any legal expenses or other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) CONTRIBUTION. If the indemnification provided for in this Section 5 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in

respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such indemnifying party or by such indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation (even if the Electing Holders or any underwriters, selling agents or other securities professionals or all of them were treated as one entity for such purpose) or any other method of allocation which does not take account of the equitable considerations referred to in this Section 5(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The obligations of the Electing Holders and any underwriters, selling agents or other securities professionals in this Section 5(d) to contribute shall be several in proportion to the percentage of principal amount of Registrable Securities registered or underwritten, as the case may be, by them and not joint.

(e) Notwithstanding any other provision of this Section 5, in no event will any (i) Electing Holder be required to undertake liability to any person under this Section 5 for any amounts in excess of the dollar amount of the proceeds to be received by such holder from the sale of such holder's Registrable Securities (after deducting any fees, discounts and commissions applicable thereto) pursuant to any Shelf Registration Statement under which such Registrable Securities are to be registered under the Securities Act and (ii) underwriter, selling agent or other securities professional be required to undertake liability to any person hereunder for any amounts in excess of the discount, commission or other compensation payable to such underwriter, selling agent or other securities professional with respect to the Registrable Securities underwritten by it and distributed to the public.

(f) The obligations of the Company under this Section 5 shall be in addition to any liability which the Company may otherwise have to any Indemnified Person and the obligations of any Indemnified Person under this Section 5 shall be in addition to any liability which such Indemnified Person may otherwise have to the Company. The remedies provided in this Section 5 are not exclusive and shall not limit any rights or remedies which may otherwise be available to an indemnified party at law or in equity.

6. UNDERWRITTEN OFFERING. Any holder of Registrable Securities who desires to do so may sell such Registrable Securities, in whole or in part, in an underwritten offering; PROVIDED that (i) the Electing Holders of at least 33 1/3% in aggregate principal amount of the Registrable Securities then covered by the Shelf Registration Statement shall request such an underwritten offering and (ii) at least \$25,000,000 in aggregate principal amount of such Registrable Securities shall be included in such underwritten offering; and PROVIDED FURTHER that the Company shall not be obligated to cooperate with more than one underwritten offering during the Effectiveness Period. Upon receipt of such a request, the Company shall provide all holders of Registrable Securities written notice of the request, which notice shall inform such holders that they have the opportunity to participate in the offering. In any such underwritten offering, the investment banker or bankers and manager or managers that will administer the offering will be selected by, and the underwriting arrangements with respect thereto (including the size of the offering) will be approved by, the holders of a majority of the Registrable Securities to be included in such offering; PROVIDED, HOWEVER, that such investment bankers and managers and underwriting arrangements must be reasonably satisfactory to the Company. No holder may participate in any underwritten offering contemplated hereby unless (a) such holder agrees to sell such holder's Registrable Securities to be included in the underwritten offering in accordance with any approved underwriting arrangements, (b) such holder completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents required under the terms of such approved underwriting arrangements, and (c) if such holder is not then an Electing Holder, such holder returns a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(2) hereof within a reasonable amount of time before such underwritten offering. The holders participating in any underwritten offering shall be responsible for any underwriting discounts and commissions and fees and expenses of their own counsel. The Company shall pay all expenses customarily borne by issuers, including but not limited to filing fees, the fees and disbursements of its counsel and independent public accountants and any printing expenses incurred in connection with such underwritten offering.

7. MISCELLANEOUS.

(a) OTHER REGISTRATION RIGHTS. The Company may grant registration rights that would permit any Person that is a third party the right to piggy-back on the Shelf Registration Statement, PROVIDED, HOWEVER, that if the Managing Underwriter, if any, of an underwritten offering conducted pursuant to Section 6 hereof notifies the Company and the Electing Holders that the total amount of securities which the Electing Holders and the holders of such piggy-back rights intend to include in the Shelf Registration Statement is so large as to materially threaten the success of such offering (including the price at which such securities can be sold), then the amount, number or kind of securities to be offered for the account of holders of such piggy-back rights will be reduced to the extent necessary to reduce the total amount of securities to be included in such offering to the amount, number and kind recommended by the Managing Underwriter prior to any reduction in the amount of Registrable Securities to be included in the Shelf Registration Statement.

(b) AMENDMENTS AND WAIVERS. This Agreement, including this Section 7(b), may be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may be given, only by a written instrument duly executed by the Company and the holders of a majority in aggregate principal amount of Registrable Securities then outstanding. Each holder of Registrable Securities outstanding at the time of any such amendment, waiver or consent or thereafter shall be bound by any amendment, waiver or consent effected pursuant to this Section 7(b), whether or not any notice, writing or marking indicating such amendment, waiver or consent appears on the Registrable Securities or is delivered to such holder.

(c) NOTICES. All notices and other communications provided for or permitted hereunder shall be given as provided in the Indenture.

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

(d) PARTIES IN INTEREST. The parties to this Agreement intend that all holders of Registrable Securities shall be entitled to receive the benefits of this Agreement and that any Electing Holder shall be bound by the terms and provisions of this Agreement by reason of such election with respect to the Registrable Securities which are included in the Shelf Registration Statement. All the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective successors and assigns of the parties hereto and any holder from time to time of the Registrable Securities to the aforesaid extent. In the event that any transferee or any holder of Registrable Securities shall acquire Registrable Securities, in any manner, whether by gift, bequest, purchase, operation of law or otherwise, such transferee shall, without any further writing, consent or action of any kind, be entitled to receive the benefits of and, if an Electing Holder, by conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement to the aforesaid extent.

(e) COUNTERPARTS. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(f) HEADINGS. The headings in this agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(g) GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any provisions relating to conflicts of laws.

(h) SEVERABILITY. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every

other respect and of the remaining provisions hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties hereto shall be enforceable to the fullest extent permitted by law.

(i) SURVIVAL. The respective indemnities, agreements, representations, warranties and other provisions set forth in this Agreement or made pursuant hereto shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Electing Holder, any director, officer or partner of such holder, any agent or underwriter, any director, officer or partner of such agent or underwriter, or any controlling person of any of the foregoing, and shall survive the transfer and registration of the Registrable Securities of such holder.

Please confirm that the foregoing correctly sets forth the agreement between the Company and you.

Very truly yours,

ASPEN TECHNOLOGY, INC.

By: /s/ Lawrence Evans

Name: Lawrence Evans

Title: Chairman and Chief Executive Officer

The foregoing Registration Rights Agreement is hereby confirmed and accepted as of the date first above written.

Goldman, Sachs & Co.
NationsBanc Montgomery Securities, LLC
William Blair & Company, L.L.C.

By: /s/ Goldman, Sachs & Co.

(Goldman, Sachs & Co.)

ASPEN TECHNOLOGY, INC.

INSTRUCTION TO DTC PARTICIPANTS

_____, 199__

URGENT - IMMEDIATE ATTENTION REQUESTED

DEADLINE FOR RESPONSE: _____, 199__

The Depository Trust Company ("DTC") has identified you as a DTC Participant through which beneficial interests in 5 1/4% Convertible Subordinated Debentures due June 15, 2005 (the "Securities") of Aspen Technology, Inc. (the "Company") are held.

The Company is in the process of registering the Securities under the Securities Act of 1933 for resale by the beneficial owners thereof. In order to have their Securities included in the registration statement, beneficial owners must complete and return the enclosed Notice of Registration Statement and Selling Securityholder Questionnaire.

IT IS IMPORTANT THAT BENEFICIAL OWNERS OF THE SECURITIES RECEIVE A COPY OF THE ENCLOSED MATERIALS AS SOON AS POSSIBLE as their rights to have the Securities included in the registration statement depend upon their returning the Notice and Questionnaire by _____, 1998. Please forward a copy of the enclosed documents to each beneficial owner that holds interest in the Securities through you. If you require more copies of the enclosed materials or have any questions pertaining to this matter, please contact General Counsel, Aspen Technology, Inc., 10 Canal Park, Cambridge, Massachusetts, 02141, Telephone No. (617) 949-1000.

ASPEN TECHNOLOGY, INC.

NOTICE OF REGISTRATION STATEMENT
AND
SELLING SECURITYHOLDER QUESTIONNAIRE

_____, 199__

Reference is hereby made to the Registration Rights Agreement (the "Registration Rights Agreement") among Aspen Technology, Inc. (the "Company") and the Purchasers named therein. Pursuant to the Registration Rights Agreement, the Company has filed with the United States Securities and Exchange Commission (the "Commission") a registration statement (the "Shelf Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Company's 5 1/4% Convertible Subordinated Debentures due June 15, 2005 (the "Securities") and the shares of common stock, par value \$.10 per share (the "Common Stock"), issuable upon conversion thereof. A copy of the Registration Rights Agreement is attached hereto. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Each beneficial owner of Registrable Securities (as defined below) is entitled to have the Registrable Securities beneficially owned by it included in the Shelf Registration Statement. In order to have Registrable Securities included in the Shelf Registration Statement, this Notice of Registration Statement and Selling Securityholder Questionnaire ("Notice and Questionnaire") must be completed, executed and delivered to the Company's counsel at the address set forth herein for receipt ON OR BEFORE _____, 1998. Beneficial Owners of Registrable Securities who do not complete, execute and return this Notice and Questionnaire by such date (i) will not be named as selling securityholders in the Shelf Registration Statement and (ii) may not use the Prospectus forming a part thereof for resales of Registrable Securities.

Certain legal consequences arise from being named as a selling securityholder in the Shelf Registration Statement and related Prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Shelf Registration Statement and related Prospectus.

The term "REGISTRABLE SECURITIES" is defined in the Registration Rights Agreement to mean all or any portion of the Securities issued from time to time under the Indenture in registered form and the shares of Common Stock issued or issuable upon conversion of such Securities; PROVIDED, HOWEVER, that a security ceases to be a Registrable Security when it is no longer a Restricted Security.

The term "RESTRICTED SECURITY" is defined in the Registration Rights Agreement to mean any Security or share of Common Stock issuable upon conversion thereof except any such Security or share of Common Stock which (i) has been effectively registered under the Securities Act and sold in a manner contemplated by the Shelf Registration Statement, (ii) has been transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or is transferable pursuant to paragraph (k) of such Rule 144 (or any successor provision thereto), or (iii) has otherwise been transferred and a new Security or share of Common Stock not subject to transfer restrictions under the Securities Act has been delivered by or on behalf of the Company in accordance with Section 3.5 of the Indenture.

ELECTION

The undersigned holder (the "Selling Securityholder") of Registrable Securities hereby elects to include in the Shelf Registration Statement the Registrable Securities beneficially owned by it and listed below in Item (3). The undersigned, by signing and returning this Notice and Questionnaire, agrees to be bound with respect to such Registrable Securities by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement, including, without limitation, Section 5 of the Registration Rights Agreement, as if the undersigned Selling Securityholder were an original party thereto.

Upon any sale of Registrable Securities pursuant to the Shelf Registration Statement, the Selling Securityholder will be required to deliver to the Company and Trustee the Notice of Transfer set forth as Exhibit B to the Registration Rights Agreement.

The Selling Securityholder hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

(1) (a) Full Legal Name of Selling Securityholder:

(b) Full Legal Name of Registered Holder (if not the same as in (a) above) of Registrable Securities Listed in (3) below:

(c) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) Through Which Registrable Securities Listed in (3) below are Held:

(2) Address for Notices to Selling Securityholder:

Telephone: _____

Fax: _____

Contact Person: _____

(3) Beneficial Ownership of Securities and shares of Common Stock issued upon conversion of Securities:

Except as set forth in this Item (3), the undersigned does not beneficially own any Securities or shares of Common Stock issued upon conversion of any Securities.

(a) Principal amount of Registrable Securities (as defined in the Registration Rights Agreement) beneficially owned:_____

CUSIP No(s). of such Registrable Securities:_____

Number of shares of Common Stock (if any) issued upon conversion of such Registrable Securities:_____

- (b) Principal amount of Securities other than Registrable Securities beneficially owned:_____

CUSIP No(s). of such other Securities:_____

Number of shares of Common Stock (if any) issued upon conversion of such other Securities:_____

- (c) Principal amount of Registrable Securities which the undersigned wishes to be included in the Shelf Registration Statement:_____

CUSIP No(s). of such Registrable Securities to be included in the Shelf Registration Statement:_____

Number of shares of Common Stock (if any) issued upon conversion of Registrable Securities which are to be included in the Shelf Registration Statement:_____

- (4) Beneficial Ownership of Other Securities of the Company:

Except as set forth below in this Item (4), the undersigned Selling Securityholder is not the beneficial or registered owner of any shares of Common Stock or any other securities of the Company, other than the Securities and shares of Common Stock listed above in Item (3).

State any exceptions here:

- (5) Relationships with the Company:

Except as set forth below, neither the Selling Securityholder nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

(6) Plan of Distribution:

Except as set forth below, the undersigned Selling Securityholder intends to distribute the Registrable Securities listed above in Item (3) only as follows (if at all): Such Registrable Securities may be sold from time to time directly by the undersigned Selling Securityholder or, alternatively, through underwriters, broker-dealers or agents. Such Registrable Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve crosses or block transactions) (i) on any national securities exchange or quotation service on which the Registered Securities may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market, or (iv) through the writing of options. In connection with sales of the Registrable Securities or otherwise, the Selling Securityholder may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Registrable Securities in the course of hedging the positions they assume. The Selling Securityholder may also sell Registrable Securities short and deliver Registrable Securities to close out such short positions, or loan or pledge Registrable Securities to broker-dealers that in turn may sell such securities.

State any exceptions here:

Note: In no event may such method(s) of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company or as provided in the Registration Rights Agreement.

By signing below, the Selling Securityholder acknowledges that it understands its obligation to comply, and agrees that it will comply, with the provisions of the Exchange Act and the rules and regulations thereunder, particularly Regulation M.

In the event that the Selling Securityholder transfers all or any portion of the Registrable Securities listed in Item (3) above after the date on which such information is provided to the Company, the Selling Securityholder agrees to notify the transferee(s) at the time of the transfer of its rights and obligations under this Notice and Questionnaire and the Registration Rights Agreement.

By signing below, the Selling Securityholder consents to the disclosure of the information contained herein in its answers to Items (1) through (6) above and the inclusion of such information in the Shelf Registration Statement and related Prospectus. The Selling Securityholder understands that such information will be relied upon by the Company in connection with the preparation of the Shelf Registration Statement and related Prospectus.

In accordance with the Selling Securityholder's obligation under Section 3(a) of the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the Selling Securityholder agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein which may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains in effect. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing, by hand-delivery, first-class mail, or air courier guaranteeing overnight delivery as follows:

(i) To the Company:

Aspen Technology, Inc.
10 Canal Park
Cambridge, MA 02141
Attention: General Counsel

(ii) With a copy to:

Foley, Hoag & Eliot LLP
One Post Office Square
Boston, MA 02109
Attention: Mark L. Johnson, Esq.

Once this Notice and Questionnaire is executed by the Selling Securityholder and received by the Company's counsel, the terms of this Notice and Questionnaire, and the representations and warranties contained herein, shall be binding on, shall inure to the benefit of and shall be enforceable by the respective successors, heirs, personal representatives, and assigns of the Company and the Selling Securityholder with respect to the Registrable Securities beneficially owned by such Securityholder and listed in Item (3) above. This Agreement shall be governed in all respects by the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated: _____

Selling Securityholder
(Print/type full legal name of beneficial
owner of Registrable Securities)

By: _____

Name: _____

Title: _____

PLEASE RETURN THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE FOR RECEIPT ON OR BEFORE _____, 1998 TO THE COMPANY'S COUNSEL AT:

Aspen Technology, Inc.
10 Canal Park
Cambridge, MA 02141
Attention: General Counsel

NOTICE OF TRANSFER PURSUANT TO REGISTRATION STATEMENT

The Chase Manhattan Bank
 Aspen Technology, Inc.
 [Address of Trustee]

Attention: [Corporate Trust Services]

Re: ASPEN TECHNOLOGY, INC. (THE "COMPANY") 5 1/4% CONVERTIBLE
 SUBORDINATED DEBENTURES DUE JUNE 15, 2005 (THE
 "DEBENTURES") AND COMMON STOCK, \$.10 PAR VALUE PER SHARE, ISSUED OR
 ISSUABLE UPON CONVERSION OF DEBENTURES

Dear Sirs:

Please be advised that _____ has transferred
 [\$_____ aggregate principal amount of the above-referenced
 Debentures][_____ shares of Common Stock] pursuant to an effective
 Registration Statement (File No. 333-____) filed by the Company.

We hereby certify that the prospectus delivery requirements, if any, of the
 Securities Act of 1933, as amended, have been satisfied and that the above-named
 beneficial owner of the [Debentures][Common Stock] is named as a "Selling
 Holder" in the Prospectus dated _____, 199__ or in supplements
 thereto, and that the [aggregate principal amount of the Debentures][number of
 shares of Common Stock] transferred are the [Debentures][shares of Common Stock]
 listed in such Prospectus opposite such owner's name.

Date:

Very truly yours,

 (Name)

By: _____
 (Authorized Signature)

ASPEN TECHNOLOGY PRICES \$75 MILLION PRIVATE OFFERING
OF CONVERTIBLE SUBORDINATED DEBENTURES

CAMBRIDGE, Mass.--June 12, 1998--Aspen Technology, Inc. (NASDAQ: AZPN) today announced that it has agreed to sell \$75 million of its 5 1/4% convertible subordinated debentures due June 15, 2005 in an offering to qualified institutional buyers.

The debentures will be convertible into Aspen Technology common stock at a price of approximately \$52.97 per share and will be non-callable for a three-year period. The net proceeds of the offering will be used for working capital and other general corporate purposes, which may include acquisitions of or investments in one or more new technologies, products or businesses.

The offering is expected to close on June 17, 1998. Aspen Technology has granted the initial purchasers of the debentures a 30-day option to purchase an additional \$11.25 million aggregate principal amount of debentures to cover over-allotments, if any.

This announcement is neither an offer to sell nor a solicitation to buy any of these securities. The securities have not been registered under the Securities Act of 1933, as amended, or any state securities laws, and unless so registered, may not be offered or sold in the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933 and applicable state securities laws.