

OWENS & MINOR INC/VA/  
Form 10-Q/A  
September 12, 2008  
Table of Contents

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

**FORM 10-Q/A**  
**Amendment No. 2**

**x QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934**  
For the quarterly period ended June 30, 2008

**OR**

**“ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-9810

**Owens & Minor, Inc.**

Edgar Filing: OWENS & MINOR INC/VA/ - Form 10-Q/A

(Exact name of Registrant as specified in its charter)

<b>Virginia</b> (State or other jurisdiction of incorporation or organization)	<b>54-1701843</b> (I.R.S. Employer Identification No.)
<b>9120 Lockwood Boulevard, Mechanicsville, Virginia</b> (Address of principal executive offices)	<b>23116</b> (Zip Code)
<b>Post Office Box 27626, Richmond, Virginia</b> (Mailing address of principal executive offices)	<b>23261-7626</b> (Zip Code)
<b>Registrant's telephone number, including area code (804) 723-7000</b>	

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares of Owens & Minor, Inc.'s common stock outstanding as of July 31, 2008, was 41,344,042 shares.

**Table of Contents**

**EXPLANATORY NOTE**

This Amendment No. 2 on Form 10-Q/A amends the Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2008, as originally filed with the Securities and Exchange Commission on August 7, 2008 (the Original Form 10-Q ), of Owens & Minor, Inc. (the Company ), as amended by Amendment No. 1 filed on September 9, 2008. The Company filed Amendment No. 1 to correct an inadvertent omission of language in the introductory language to paragraph 4 of the certifications made pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 filed as exhibits to the Original Form 10-Q. The Company is filing this Amendment No. 2 to include re-dated signature pages and certifications.

Except for the foregoing amended information, this Amendment No. 2 on Form 10-Q/A continues to speak as of the date of the original filing, and the Company has not updated the disclosure contained herein to reflect events that occurred at a later date. Other events occurring after the date of the original filing or other disclosures necessary to reflect subsequent events have been or will be addressed in reports filed with the SEC that address financial reporting periods subsequent to the quarter ended June 30, 2008.

---

**Table of Contents**

**Owens & Minor, Inc. and Subsidiaries**

**Index**

	<b>Page</b>
<b><u>Part I. Financial Information</u></b>	
Item 1. <u>Financial Statements</u>	
<u>Condensed Consolidated Statements of Income – Three Months and Six Months Ended June 30, 2008 and 2007</u>	4
<u>Condensed Consolidated Balance Sheets – June 30, 2008 and December 31, 2007</u>	5
<u>Condensed Consolidated Statements of Cash Flows – Six Months Ended June 30, 2008 and 2007</u>	6
<u>Notes to Condensed Consolidated Financial Statements</u>	7
Item 2. <u>Management’s Discussion and Analysis of Financial Condition and Results of Operations</u>	11
Item 3. <u>Quantitative and Qualitative Disclosures About Market Risk</u>	15
Item 4. <u>Controls and Procedures</u>	16
<b><u>Part II. Other Information</u></b>	
Item 1. <u>Legal Proceedings</u>	16
Item 1A. <u>Certain Risk Factors</u>	16
Item 4. <u>Submission of Matters to a Vote of Shareholders</u>	16
Item 6. <u>Exhibits</u>	18

**Table of Contents****Part I. Financial Information****Item 1. Financial Statements**

**Owens & Minor, Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Income**  
*(unaudited)*

<i>(in thousands, except per share data)</i>	Three Months Ended June 30,		Six Months Ended June 30,	
	2008	2007	2008	2007
Revenue	\$ 1,794,915	\$ 1,679,044	\$ 3,547,632	\$ 3,365,243
Cost of revenue	1,604,728	1,502,181	3,170,353	3,013,719
Gross margin	190,187	176,863	377,279	351,524
Selling, general and administrative expenses	141,546	133,456	278,654	276,238
Depreciation and amortization	7,791	8,088	15,596	16,266
Other operating income and expense, net	(948)	(1,388)	(1,968)	(2,470)
Operating earnings	41,798	36,707	84,997	61,490
Interest expense, net	2,826	6,613	6,339	13,784
Income before income taxes	38,972	30,094	78,658	47,706
Income tax provision	15,340	11,828	30,817	18,625
<b>Net income</b>	<b>\$ 23,632</b>	<b>\$ 18,266</b>	<b>\$ 47,841</b>	<b>\$ 29,081</b>
<b>Net income per common share basic</b>	<b>\$ 0.58</b>	<b>\$ 0.45</b>	<b>\$ 1.18</b>	<b>\$ 0.73</b>
<b>Net income per common share diluted</b>	<b>\$ 0.57</b>	<b>\$ 0.45</b>	<b>\$ 1.16</b>	<b>\$ 0.71</b>
<b>Cash dividends per common share</b>	<b>\$ 0.20</b>	<b>\$ 0.17</b>	<b>\$ 0.40</b>	<b>\$ 0.34</b>

See accompanying notes to condensed consolidated financial statements.

**Table of Contents**

**Owens & Minor, Inc. and Subsidiaries**  
**Condensed Consolidated Balance Sheets**  
*(unaudited)*

<i>(in thousands, except per share data)</i>	<b>June 30, 2008</b>	<b>December 31, 2007</b>
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 4,932	\$ 2,129
Accounts and notes receivable, net of allowances of \$28,701 and \$24,912	474,248	462,392
Merchandise inventories	632,877	581,569
Other current assets	54,416	43,767
<b>Total current assets</b>	<b>1,166,473</b>	<b>1,089,857</b>
Property and equipment, net of accumulated depreciation of \$73,182 and \$67,868	72,875	76,122
Goodwill, net	271,699	271,699
Intangible assets, net	27,625	32,517
Other assets, net	47,509	44,885
<b>Total assets</b>	<b>\$ 1,586,181</b>	<b>\$ 1,515,080</b>
<b>Liabilities and shareholders equity</b>		
<b>Current liabilities</b>		
Accounts payable	\$ 555,791	\$ 469,102
Accrued payroll and related liabilities	21,668	18,763
Other accrued liabilities	78,289	80,599
<b>Total current liabilities</b>	<b>655,748</b>	<b>568,464</b>
Long-term debt, excluding current portion	221,081	283,845
Other liabilities	50,037	48,412
<b>Total liabilities</b>	<b>926,866</b>	<b>900,721</b>
<b>Shareholders equity</b>		
Preferred stock, par value \$100 per share; authorized - 10,000 shares Series A; Participating Cumulative Preferred Stock; none issued		
Common stock, par value \$2 per share; authorized - 200,000 shares; issued and outstanding 41,373 shares and 40,874 shares	82,745	81,748
Paid-in capital	174,533	161,978
Retained earnings	409,293	377,913
Accumulated other comprehensive loss	(7,256)	(7,280)
<b>Total shareholders equity</b>	<b>659,315</b>	<b>614,359</b>
<b>Total liabilities and shareholders equity</b>	<b>\$ 1,586,181</b>	<b>\$ 1,515,080</b>

See accompanying notes to condensed consolidated financial statements.

**Table of Contents****Owens & Minor, Inc. and Subsidiaries****Condensed Consolidated Statements of Cash Flows***(unaudited)*

<i>(in thousands)</i>	<b>Six Months Ended June 30,</b>	
	<b>2008</b>	<b>2007</b>
<b>Operating activities</b>		
Net income	\$ 47,841	\$ 29,081
Adjustments to reconcile net income to cash provided by operating activities:		
Depreciation and amortization	15,596	16,266
Provision for losses on accounts and notes receivable	10,827	10,503
Provision for LIFO reserve	10,468	5,900
Amortization of direct-response advertising	3,409	3,501
Deferred direct-response advertising costs	(4,769)	(4,391)
Share-based compensation expense	4,879	3,804
Changes in operating assets and liabilities:		
Accounts and notes receivable	(22,683)	13,179
Merchandise inventories	(61,776)	26,591
Accounts payable	82,989	1,838
Net change in other current assets and liabilities	(9,313)	(19,110)
Other, net	1,495	(776)
<b>Cash provided by operating activities</b>	<b>78,963</b>	<b>86,386</b>
<b>Investing activities</b>		
Additions to property and equipment	(3,765)	(8,207)
Additions to computer software	(5,895)	(4,842)
Acquisition of intangible assets		(58)
Net cash paid for acquisitions of businesses		(2,410)
Other, net	8	375
<b>Cash used for investing activities</b>	<b>(9,652)</b>	<b>(15,142)</b>
<b>Financing activities</b>		
Cash dividends paid	(16,461)	(13,766)
Net payments on revolving credit facility	(62,200)	(59,800)
Proceeds from exercise of stock options	7,226	4,668
Excess tax benefits related to share-based compensation	2,454	2,076
Increase (decrease) in drafts payable	3,700	(4,000)
Other, net	(1,227)	(1,104)
<b>Cash used for financing activities</b>	<b>(66,508)</b>	<b>(71,926)</b>
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>2,803</b>	<b>(682)</b>
<b>Cash and cash equivalents at beginning of period</b>	<b>2,129</b>	<b>5,090</b>
<b>Cash and cash equivalents at end of period</b>	<b>\$ 4,932</b>	<b>\$ 4,408</b>

See accompanying notes to condensed consolidated financial statements.





**Table of Contents****Owens & Minor, Inc. and Subsidiaries****Notes to Condensed Consolidated Financial Statements***(unaudited)***1. Basis of Presentation and Use of Estimates**

The accompanying unaudited condensed consolidated financial statements contain all adjustments (which are comprised only of normal recurring accruals and the use of estimates) necessary to present fairly the consolidated financial position of Owens & Minor, Inc. and its wholly-owned subsidiaries (O&M or the company) as of June 30, 2008 and December 31, 2007, and the consolidated results of operations for the three- and six-month periods and cash flows for the six-month periods ended June 30, 2008 and 2007, in conformity with U.S. generally accepted accounting principles (GAAP). The preparation of financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and the disclosure of contingent assets and liabilities. Actual results could differ from those estimates.

**2. Interim Results of Operations**

The results of operations for interim periods are not necessarily indicative of the results to be expected for the full year.

**3. Direct-Response Advertising Costs**

The following table presents the activity in capitalized direct-response advertising costs for the three and six months ended June 30, 2008 and 2007:

<i>(in thousands)</i>	Three Months Ended June 30,		Six Months Ended June 30,	
	2008	2007	2008	2007
Beginning, direct-response advertising costs, net	\$ 10,682	\$ 10,596	\$ 10,469	\$ 9,817
Deferred direct-response advertising costs	2,903	2,017	4,769	4,391
Amortization	(1,756)	(1,906)	(3,409)	(3,501)
Ending, direct-response advertising costs, net	\$ 11,829	\$ 10,707	\$ 11,829	\$ 10,707

**4. Intangible Assets**

Intangible assets at June 30, 2008 and December 31, 2007, are as follows:

<i>(in thousands)</i>	Customer Relationships	Other Intangibles	Total
At June 30, 2008:			
Gross intangible assets	\$ 49,281	\$ 8,791	\$ 58,072
Accumulated amortization	(26,198)	(4,249)	(30,447)
Net intangible assets	\$ 23,083	\$ 4,542	\$ 27,625

Edgar Filing: OWENS & MINOR INC/VA/ - Form 10-Q/A

At December 31, 2007:			
Gross intangible assets	\$ 49,281	\$ 8,791	\$ 58,072
Accumulated amortization	(22,119)	(3,436)	(25,555)
Net intangible assets	\$ 27,162	\$ 5,355	\$ 32,517
Weighted average useful life	8 years	6 years	

**Table of Contents**

Amortization expense for intangible assets was \$2.4 million and \$3.2 million for the three months ended June 30, 2008 and 2007, and \$4.9 million and \$6.3 million for the six months ended June 30, 2008 and 2007.

Based on the current carrying value of intangible assets subject to amortization, estimated future amortization expense is as follows: Remainder of 2008 \$4.2 million; 2009 \$5.9 million; 2010 \$3.6 million; 2011 \$2.1 million; 2012 \$1.5 million.

**5. Retirement Plans**

The components of net periodic pension cost of the company's retirement plans for the three and six months ended June 30, 2008 and 2007, are as follows:

<i>(in thousands)</i>	Three Months Ended June 30,		Six Months Ended June 30,	
	2008	2007	2008	2007
Service cost	\$ 398	\$ 197	\$ 617	\$ 424
Interest cost	861	776	1,709	1,573
Expected return on plan assets	(490)	(422)	(980)	(881)
Amortization of prior service cost	38	39	78	79
Recognized net actuarial loss	204	187	385	379
Net periodic pension cost	\$ 1,011	\$ 777	\$ 1,809	\$ 1,574

**6. Comprehensive Income**

The company's comprehensive income for the three and six months ended June 30, 2008 and 2007, is shown in the table below:

<i>(in thousands)</i>	Three Months Ended June 30,		Six Months Ended June 30,	
	2008	2007	2008	2007
Net income	\$ 23,632	\$ 18,266	\$ 47,841	\$ 29,081
Other comprehensive loss change in value of cash-flow hedge derivatives, net of tax	(11)	(12)	(23)	(25)
Other comprehensive income adjustments related to pension benefit plans, net of tax	47		47	
Comprehensive income	\$ 23,668	\$ 18,254	\$ 47,865	\$ 29,056

**Table of Contents****7. Net Income per Common Share**

The following sets forth the computation of basic and diluted net income per common share:

<i>(in thousands, except per share data)</i>	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>June 30,</b>		<b>June 30,</b>	
	<b>2008</b>	<b>2007</b>	<b>2008</b>	<b>2007</b>
Numerator:				
Numerator for basic and diluted net income per common share net income	\$ 23,632	\$ 18,266	\$ 47,841	\$ 29,081
Denominator:				
Denominator for basic net income per common share weighted average shares	40,754	40,213	40,677	40,111
Effect of dilutive securities stock options and restricted stock	695	550	686	599
Denominator for diluted net income per common share adjusted weighted average shares	41,449	40,763	41,363	40,710
Net income per common share basic	\$ 0.58	\$ 0.45	\$ 1.18	\$ 0.73
Net income per common share diluted	\$ 0.57	\$ 0.45	\$ 1.16	\$ 0.71

**8. Direct-to-Consumer (DTC) Distribution Business**

For the three months ended June 30, 2008 and 2007, the DTC distribution business contributed \$23.7 million and \$27.9 million of revenue, and \$1.5 million of operating losses and \$2.3 million of operating earnings to the company. For the six months ended June 30, 2008 and 2007, the DTC distribution business contributed \$49.1 million and \$54.9 million of revenue, and \$1.4 million of operating losses and \$1.3 million of operating earnings to the company.

**9. Recent Accounting Pronouncements**

Statement of Financial Accounting Standards No. (SFAS) 157, *Fair Value Measurements*, defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles, and expands disclosures about fair value measurements. This statement does not require any new fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. In February 2008, the effective date of SFAS 157 was deferred to fiscal years beginning after November 15, 2008, for all nonfinancial assets and nonfinancial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis. The company adopted SFAS 157 beginning in the interim period ended March 31, 2008, for financial assets and liabilities. The adoption had no impact on the company's financial statements for the periods presented herein. The company is evaluating the impact of adoption of SFAS 157 for nonfinancial assets and nonfinancial liabilities on the company's financial position and results of operations.

The company's interest rate swap agreements are recorded at fair value using observable market inputs (Level 2), as defined by, and in accordance with, the fair value hierarchy of SFAS 157. At June 30, 2008, the fair value of interest rate swap agreements was \$4.9 million. The fair value of the swap agreements is recorded in other assets, net, on the condensed consolidated balance sheet.

The company adopted SFAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities*, as of January 1, 2008. This statement permits the company the irrevocable option to account for most financial assets and financial liabilities at fair value, rather than at historical cost, with changes in the fair value recognized in earnings. The adoption had no impact on the

## **Table of Contents**

company's consolidated financial statements for the three and six months ended June 30, 2008, as the company has not elected the fair value option for any of its financial assets or financial liabilities.

The company adopted Emerging Issues Task Force Issue No. (EITF) 06-11, *Accounting for Income Tax Benefits of Dividends on Share-Based Payment Awards*, as of January 1, 2008 on a prospective basis. EITF 06-11 requires income tax benefits from dividends or dividend equivalents that are charged to retained earnings and are paid to employees for equity-classified nonvested equity shares, nonvested equity share units, and outstanding equity share options to be recognized as an increase to additional paid-in capital. The impact of EITF 06-11 on the three and six months ended June 30, 2008 was not material.

In March 2008, SFAS 161, *Disclosures about Derivative Instruments and Hedging Activities-an amendment of FASB Statement No. 133*, was issued. This statement requires enhanced disclosures about an entity's derivative and hedging activities. SFAS 161 will be effective for the company in the first quarter of 2009 and the impact to the company's consolidated financial statements will be limited to changes in disclosures.

In April 2008, FASB Staff Position (FSP) FAS 142-3, *Determination of the Useful Life of Intangible Assets*, was issued, which amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS 142, *Goodwill and Other Intangible Assets*. This FSP is effective for fiscal years beginning after December 15, 2008, with prospective application to intangible assets acquired after the effective date. The adoption of FSP FAS 142-3 is not expected to have a material impact on the company's consolidated financial statements.

In May 2008, SFAS 162, *The Hierarchy of Generally Accepted Accounting Principles*, was issued. SFAS 162 identifies the sources of accounting principles and the framework for selecting the principles to be used in the preparation of financial statements of nongovernmental entities that are presented in conformity with GAAP in the United States (the GAAP hierarchy). SFAS 162 makes the GAAP hierarchy explicitly and directly applicable to preparers of financial statements, a step that recognizes preparers' responsibilities for selecting the accounting principles for their financial statements, and sets the stage for making the framework of FASB Concept Statements fully authoritative. The effective date for SFAS 162 is 60 days following the SEC's approval of the Public Company Accounting Oversight Board's related amendments to remove the GAAP hierarchy from auditing standards, where it has resided for some time. The adoption of SFAS 162 is not expected to have an impact on the company's consolidated financial statements.

In June 2008, FSP EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities*, was issued. This FSP addresses whether instruments granted in share-based payment transactions are participating securities prior to vesting, and therefore, need to be included in the earnings allocation in computing earnings per share (EPS) under the two-class method described in SFAS 128, *Earnings per Share*. FSP EITF 03-6-1 is effective for fiscal years beginning after December 15, 2008. The company is evaluating the impact of this pronouncement on the consolidated financial statements.

---

**Table of Contents****Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion and analysis describes material changes in the financial condition of Owens & Minor, Inc. and its wholly-owned subsidiaries (O&M or the company) since December 31, 2007. Trends of a material nature are discussed to the extent known and considered relevant. This discussion should be read in conjunction with the condensed consolidated financial statements, related notes thereto, and management's discussion and analysis of financial condition and results of operations included in the company's Annual Report on Form 10-K for the year ended December 31, 2007.

**Results of Operations****Second quarter and first six months of 2008 compared with 2007**

**Overview.** In the second quarter and first six months of 2008, the company earned net income of \$23.6 million and \$47.8 million, improved from \$18.3 million and \$29.1 million in the comparable periods of 2007. Net income per diluted common share was \$0.57 for the second quarter and \$1.16 for the first six months of 2008, increased from \$0.45 and \$0.71 in the comparable periods of 2007. Operating earnings, which were \$41.8 million, or 2.33% of revenue, in the second quarter of 2008, increased from \$36.7 million, or 2.19% of revenue, in the second quarter of 2007. In the first six months of 2008, operating earnings were \$85.0 million, or 2.40% of revenue, also increased from operating earnings in the first six months of 2007, which were \$61.5 million, or 1.83% of revenue. Operating earnings in the first six months of 2007 were negatively affected by the cost of integrating the acquired acute-care distribution business of McKesson Medical-Surgical Inc.

Included in operating earnings for the second quarter and first six months of 2008 are \$1.5 million and \$1.4 million of operating losses from the direct-to-consumer (DTC) distribution business. In the comparable periods of 2007, the DTC distribution business had operating earnings of \$2.3 million and \$1.3 million.

**Revenue.** Revenue increased 6.9%, or \$115.9 million, to \$1.79 billion in the second quarter of 2008, from \$1.68 billion in the second quarter of 2007. For the first six months of 2008, revenue increased 5.4%, or \$182.4 million, from the comparable period in 2007. In comparing the second quarter of 2008 to the same period of 2007, the increase resulted primarily from greater sales to existing customers. In comparing the six-month period ended June 30, 2008 to the same period ended June 30, 2007, there was a decrease in revenue of approximately \$47 million from the acquired McKesson business. Mitigating this decrease was net new business and greater sales to existing customers. The DTC distribution business contributed \$23.7 million and \$49.1 million of revenue in the second quarter and first six months of 2008, as compared with \$27.9 million and \$54.9 million in the comparable periods of 2007. The decline in revenue of the DTC distribution business is primarily due to lower Medicare reimbursements for certain respiratory products, higher contractual allowances, adjusted based on historical payment trends, and a slightly lower patient count. There were approximately 182,000 DTC customers at June 30, 2008, as compared with 185,000 at June 30, 2007. The Medicare Improvements for Patients and Providers Act of 2008, enacted on July 15, 2008, will reduce reimbursement rates for certain items included in Medicare's competitive bidding program that are offered by the DTC distribution business. For these products, reimbursement rates will be reduced by 9.5% nationwide beginning January 1, 2009. The competitive bidding program, which was delayed pursuant to this Act, is expected to result in new contracts for these items in 18 to 24 months from the enactment date of this Act.

---

**Table of Contents**

**Gross margin.** Gross margin dollars were \$190.2 million and \$377.3 million in the second quarter and first six months of 2008. For the same periods of 2007, gross margin dollars were \$176.9 million and \$351.5 million. As a percentage of revenue, gross margin was 10.60% and 10.63% for the second quarter and first six months of 2008, as compared with 10.53% and 10.45% for the same periods of 2007. In comparing quarter-to-quarter, the 7 basis point gross margin improvement was primarily due to additional sales of value-added programs and services, including an approximate 40% increase in revenue from higher margin MediChoice® products, the company's private-label brand of select medical/surgical products. In comparing the first six months of 2008 to the same period of 2007, gross margin as a percent of revenue increased 18 basis points. This increase resulted from: (i) improved gross margin from the acquired McKesson business as this business transitioned to O&M systems; (ii) additional sales of programs and services; (iii) greater supplier incentives; and (iv) greater manufacturer's price adjustments, which were partially offset by an increase in the reserve for last-in, first-out (LIFO) inventory valuation.

The company values inventory for its healthcare provider distribution business under the LIFO method. Had inventory been valued under the first-in, first-out (FIFO) method, gross margin would have been 0.30% greater in the first six months of 2008 and 0.12% greater in the first six months of 2007.

**Selling, general and administrative (SG&A) expenses.** SG&A expenses were \$141.5 million and \$278.7 million for the second quarter and first six months of 2008, as compared with \$133.5 million and \$276.2 million in the comparable periods of 2007. As a percentage of revenue, SG&A expense was 7.89% in the second quarter and 7.85% in the first six months of 2008, improved from 7.95% and 8.21% in the comparable periods of 2007. In comparing the second quarter of 2008 to the same period of 2007, fuel costs were greater by approximately \$1.3 million and incentive compensation expense, including equity-based compensation, was greater by approximately \$3.1 million. In comparing the first six-month period of 2008 to the same period of 2007, SG&A expense as a percentage of revenue improved as a result of costs associated with the integration of the acquired McKesson business that were included in 2007, including \$6.7 million in service fees paid to McKesson for operational support during the transition period. Additionally, in the first six-month period of 2008, fuel costs were greater by approximately \$2.2 million and incentive compensation expense, including equity-based compensation, was greater by approximately \$8.4 million than in the same period of 2007. The increase in incentive compensation expense reflects improved achievement against certain performance-based measures, as well as the impact of an increase in the price of the company's common stock. These expense increases were offset by a decrease in selling costs of \$1.7 million in the first six months of 2008 and by the company leveraging its infrastructure over greater sales.

Depreciation and amortization expense for the second quarter and first six months of 2008 was \$7.8 million and \$15.6 million, a slight decrease from \$8.1 million and \$16.3 million in the comparable periods of 2007. Amortization of intangible assets was \$0.7 million and \$1.4 million less in the second quarter and first six months of 2008 compared to the same periods of 2007, due to the accounting for the McKesson purchase transaction being finalized, and lower amortization expense for acquired intangibles in the DTC distribution business, which are amortized at rates that decline during the amortization period. There were no acquisitions of intangible assets in the DTC distribution business in 2007 or in the first six months of 2008. This decrease in amortization was partially offset by greater depreciation from capital additions made to facilitate the growth in the healthcare provider business.

---

**Table of Contents**

**Interest expense, net.** Net interest expense was \$2.8 million for the second quarter and \$6.3 million for the first half of 2008, a decrease from \$6.6 million for the second quarter and from \$13.8 million for the first half of 2007. Decreased interest expense in the 2008 periods was primarily due to lower balances outstanding under the company's revolving credit agreement, as the company has significantly reduced borrowings under this facility since the second quarter of 2007. Interest expense also decreased in the 2008 periods due to a more favorable interest rate environment. In the first six months of 2008, the company's effective interest rate was 6.4% on average borrowings of approximately \$210 million, compared to 6.9% on average borrowings of approximately \$420 million in the first six months of 2007. Under the company's interest rate swap agreements related to the company's senior notes, the counterparties pay the company a fixed interest rate of 6.35%, and the company pays counterparties variable rates based on the London Interbank Offered Rate (LIBOR) which reset every six months in April and October. At the last reset date, the average rate decreased by 250 basis points to 3.75%.

**Income taxes.** The provision for income taxes was \$15.3 million and \$30.8 million in the second quarter and first six months of 2008, compared to \$11.8 million and \$18.6 million in the same periods of 2007. The effective tax rate was 39.4% and 39.2% for the second quarter and first half of 2008, compared to 39.3% and 39.0% in the same periods of 2007. The slightly lower effective rates in 2007 were primarily due to adjustments to the company's liability for unrecognized tax benefits for resolution of outstanding tax issues.

**Financial Condition, Liquidity and Capital Resources**

**Liquidity.** In the first six months of 2008, cash and cash equivalents increased by \$2.8 million to \$4.9 million at June 30, 2008. In the first half of 2008, the company generated \$79.0 million of cash flow from operations, compared with \$86.4 million in the first half of 2007. Cash flows in the first six months of 2008 were negatively affected by increases in accounts receivable and inventories, while cash flows in the first six months of 2007 were positively affected by decreases in both of these items. Cash flows in the first six months of 2008 were positively affected by the timing of payments for inventory. Cash used for investing activities decreased to \$9.7 million in the first half of 2008 from \$15.1 million in the first half of 2007, primarily due to greater capital expenditures in 2007 to accommodate the acquired McKesson business. Capital expenditures were \$9.7 million in the first six months of 2008, compared to \$13.0 million in the same period of 2007. Financing activities used \$66.5 million of cash in the first six months of 2008, and \$71.9 million in the first six months of 2007. In both periods, cash was used primarily to reduce the company's revolving credit facility and to pay dividends. Cash used to pay dividends was \$16.5 million in the first six months of 2008, increased from \$13.8 million in the same period of 2007, as the company paid a dividend per share of \$0.40 in the first half of 2008 as compared with \$0.34 per share in the first half of 2007.

Accounts receivable days sales outstanding (DSO) at June 30, 2008, were 24.0 days, improved from 24.3 days at December 31, 2007, and 27.9 days at June 30, 2007, based on three months sales. Inventory turnover was 10.4 in the second quarter of 2008, 10.6 in the fourth quarter of 2007 and 9.4 in the second quarter of 2007. Positive asset management trends from the second quarter of 2007 resulted as the company began to realize operational improvements after completing its transition of the acquired McKesson business.

The company has a \$350 million revolving credit facility. The interest rate on the facility is based on, at the company's discretion, LIBOR, the Federal Funds Rate or the Prime Rate, plus an adjustment based on the company's leverage ratio, as defined by the credit agreement. The company is charged a commitment fee of between 0.05% and 0.15% on the unused portion of the facility, which includes a 0.05% reduction



## **Table of Contents**

in the fee based on the company's investment grade rating. In July 2008, the credit agreement was amended to improve the company's flexibility by changing certain restrictions and by releasing certain guarantors.

The company has \$200 million of senior notes outstanding, which mature in 2016 and bear interest at 6.35%, payable semiannually. In conjunction with the senior notes, the company is a party to interest rate swap agreements, under which the company pays counterparties variable rates based on LIBOR, and the counterparties pay the company a fixed interest rate of 6.35% on a notional amount of \$100 million, effectively converting one-half of the notes to variable-rate debt. These swaps were designated as fair value hedges and were assumed to have no ineffectiveness under the provisions of Statement of Financial Accounting Standard No. 133, *Accounting for Derivative Instruments and Hedging Activities*.

The company believes its available financing sources will be sufficient to fund working capital needs and long-term strategic growth, although this cannot be assured. At June 30, 2008, the company had \$325 million of available credit under its revolving credit facility. Based on the company's leverage ratio at June 30, 2008, the company's interest rate under its revolving credit facility, which is subject to adjustment quarterly, will be LIBOR plus 50 basis points at the next adjustment date.

## **Recent Accounting Pronouncements**

For a discussion of recent accounting pronouncements, see note 9 in the Notes to Condensed Consolidated Financial Statements.

## **Forward-looking Statements**

Certain statements in this discussion constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Although O&M believes its expectations with respect to the forward-looking statements are based upon reasonable assumptions within the bounds of its knowledge of its business and operations, all forward-looking statements involve risks and uncertainties and, as a result, actual results could differ materially from those projected, anticipated or implied by these statements. Such forward-looking statements involve known and unknown risks, including, but not limited to:

general economic and business conditions;

the ability of the company to implement its strategic initiatives;

dependence on sales to certain customers;

the ability of customers to meet financial commitments due to the company;

the ability to retain existing customers and the success of marketing and other programs in attracting new customers;

dependence on suppliers;

the ability to adapt to changes in product pricing and other terms of purchase by suppliers of product;

changes in manufacturer preferences between direct sales and wholesale distribution;



**Table of Contents**

competition;

changing trends in customer profiles and ordering patterns;

the ability of the company to meet customer demand for additional value-added services;

the availability of supplier incentives;

access to special inventory buying opportunities;

the ability of business partners to perform their contractual responsibilities;

the ability to manage operating expenses;

the effect of higher fuel prices on delivery costs;

the ability of the company to manage financing costs and interest rate risk;

the risk that a decline in business volume or profitability could result in an impairment of goodwill;

the ability to timely or adequately respond to technological advances in the medical supply industry;

the ability to successfully identify, manage or integrate acquisitions;

the costs associated with and outcome of outstanding and any future litigation, including product and professional liability claims;

the outcome of outstanding tax contingencies;

the ability to manage reimbursements from Medicare, Medicaid, private healthcare insurers and individual customers;

changes in government regulations, including healthcare laws and regulations; and

changes in reimbursement guidelines of Medicare and Medicaid and/or reimbursement practices of private healthcare insurers.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

O&M provides credit, in the normal course of business, to its customers. The company performs ongoing credit evaluations of its customers and maintains reserves for credit losses.

The company has \$200 million of outstanding fixed-rate debt maturing in 2016. O&M uses interest rate swaps to modify the company's balance of fixed and variable rate financing, thus hedging its interest rate risk. The company is exposed to certain losses in the event of nonperformance by the counterparties to these swap agreements. However, O&M believes its exposure is not significant, and the event of nonperformance would not have a material effect on the company.

## **Table of Contents**

The company is exposed to market risk from changes in interest rates related to its interest rate swaps and its revolving credit facility. As of June 30, 2008, the company had \$100 million of interest rate swaps under which the company pays counterparties variable rates based on LIBOR, and the counterparties pay the company a fixed interest rate of 6.35% on a notional amount of \$100 million. A hypothetical increase in interest rates of 100 basis points would result in a potential reduction in future pre-tax earnings of approximately \$1.0 million per year in connection with the swaps. The company had \$25.0 million of outstanding borrowings and letters of credit under its revolving credit facility at June 30, 2008. A hypothetical increase in interest rates of 100 basis points would result in a potential reduction in future pre-tax earnings of approximately \$0.1 million per year for every \$10 million of outstanding borrowings under the revolving credit facility.

### **Item 4. Controls and Procedures**

The company carried out an evaluation, with the participation of the company's management, including its Chief Executive Officer and Chief Financial Officer, of the effectiveness of the company's disclosure controls and procedures (pursuant to Rule 13a-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the company's disclosure controls and procedures are effective in timely alerting them to material information relating to the company required to be included in the company's periodic SEC filings. There has been no change in the company's internal controls over financial reporting during the quarter ended June 30, 2008, that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

## **Part II. Other Information**

### **Item 1. Legal Proceedings**

Certain legal proceedings pending against the company are described in the company's Annual Report on Form 10-K for the year ended December 31, 2007. Through June 30, 2008, there have been no material developments in any legal proceedings reported in such Annual Report.

### **Item 1A. Certain Risk Factors**

Certain risk factors that the company believes could affect its business and prospects are described in the company's Annual Report on Form 10-K for the year ended December 31, 2007. Through June 30, 2008, there have been no material changes in any risk factors reported in such Annual Report.

### **Item 4. Submission of Matters to a Vote of Shareholders**

The following matters were submitted to a vote of O&M's shareholders at its annual meeting held on April 25, 2008, with the voting results designated below for each such matter:

- (1) Election of G. Gilmer Minor, III, J. Alfred Broaddus, Jr., Eddie N. Moore, Jr., Peter S. Redding, Robert C. Sledd and Craig R. Smith as directors of O&M for a two-year term.

**Table of Contents**

<b>Directors</b>	<b>Votes For</b>	<b>Votes Against Or Withheld</b>	<b>Abstentions</b>	<b>Broker Non-Votes</b>
G. Gilmer Minor, III	37,349,081	535,047	0	0
J. Alfred Broaddus, Jr.	37,671,832	212,296	0	0
Eddie N. Moore, Jr.	37,672,233	211,895	0	0
Peter S. Redding	37,672,979	211,150	0	0
Robert C. Sledd	37,673,420	210,709	0	0
Craig R. Smith	37,361,957	522,171	0	0

- (2) A resolution to amend the Company's Amended and Restated Articles of Incorporation to declassify the Board of Directors.

<b>Votes For</b>	<b>Votes Against Or Withheld</b>	<b>Abstentions</b>	<b>Broker Non-Votes</b>
37,389,579	77,155	17,392	0

- (3) A resolution to amend the Company's Amended and Restated Articles of Incorporation to eliminate provisions authorizing the Series B Cumulative Preferred Stock.

<b>Votes For</b>	<b>Votes Against Or Withheld</b>	<b>Abstentions</b>	<b>Broker Non-Votes</b>
34,890,323	26,105	9,319	2,958,380

- (4) Ratification of the appointment of KPMG LLP as O&M's independent registered public accountants for 2008.

<b>Votes For</b>	<b>Votes Against Or Withheld</b>	<b>Abstentions</b>	<b>Broker Non-Votes</b>
37,795,050	81,263	7,813	0

**Table of Contents**

**Item 6. Exhibits.**

(a) Exhibits

- 3.1 Owens & Minor, Inc. Amended and Restated Articles of Incorporation (incorporated herein by reference to the Company's Current Report on Form 8-K, Exhibit 3.1, dated July 29, 2008).
- 4.1 Form of Third Amendment and Consent to Amended and Restated Credit Agreement dated as of July 14, 2008 by and among Owens & Minor Medical, Inc., Owens & Minor Distribution, Inc., the Company, certain subsidiaries of the Company, the banks identified on the signature pages thereto and Bank of America, N.A., as Administrative Agent (incorporated herein by reference to the Company's Current Report on Form 8-K, Exhibit 4.1, dated July 18, 2008).
- 31.1 Certification of Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes- Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes- Oxley Act of 2002.
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

**Table of Contents**

**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 thereunto duly authorized.

Owens & Minor, Inc.  
(Registrant)

Date September 12, 2008

/s/ CRAIG R. SMITH  
Craig R. Smith  
President and Chief Executive Officer

Date September 12, 2008

/s/ JAMES L. BIERMAN  
James L. Bierman  
Senior Vice President &  
Chief Financial Officer

Date September 12, 2008

/s/ OLWEN B. CAPE  
Olwen B. Cape  
Vice President & Controller  
Chief Accounting Officer



**Table of Contents**

**Exhibits Filed with SEC**

**Exhibit #**

- 3.1 Owens & Minor, Inc. Amended and Restated Articles of Incorporation (incorporated herein by reference to the Company's Current Report on Form 8-K, Exhibit 3.1, dated July 29, 2008).
- 4.1 Form of Third Amendment and Consent to Amended and Restated Credit Agreement dated as of July 14, 2008 by and among Owens & Minor Medical, Inc., Owens & Minor Distribution, Inc., the Company, certain subsidiaries of the Company, the banks identified on the signature pages thereto and Bank of America, N.A., as Administrative Agent (incorporated herein by reference to the Company's Current Report on Form 8-K, Exhibit 4.1, dated July 18, 2008).
- 31.1 Certification of Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

20

\$1 million. However, we are able to preserve the deductibility of compensation in excess of \$1 million if the conditions of Section 162(m) are met. These conditions include shareholder approval of the Plan, setting limits on the number of Awards that any individual may receive and, for Awards other than options, establishing performance criteria that must be met before the Award actually will vest or be paid.

We have designed the 2004 Plan so that it permits us to pay compensation that qualifies as performance-based under Section 162(m). Thus, the Committee (in its discretion) may make performance goals applicable to a participant with respect to an Award. At the Committee's discretion, one or more of the following performance

24

---

## **Table of Contents**

goals may apply (all of which are defined in the 2004 Plan): cost of sales as a percentage of sales, earnings per share, marketing and sales expenses as a percentage of sales, net income as a percentage of sales, operating margin, revenue, total shareholder return and working capital.

### ***Change of Control***

In the event of a change in control of Intevac, the successor corporation may either assume or provide a substitute award for each outstanding Award. In the event the successor corporation refuses to assume or provide a substitute award, the Award will immediately vest and become exercisable as to all of the shares subject to such Award. In such case, the Committee will provide at least 15 days notice of such immediate vesting and exercisability. The Award will then terminate upon the expiration of the notice period.

### ***Limited Transferability of Awards***

Awards granted under the 2004 Plan generally may not be sold, transferred, pledged, assigned or otherwise alienated or hypothecated, other than by will or by the applicable laws of descent and distribution.

### **Material Federal Tax Considerations**

The following brief summary of the effect of federal income taxation upon the participant and Intevac with respect to Awards granted under the 2004 Plan does not purport to be complete, and does not discuss the tax consequences of a participant's death or the income tax laws of any state or foreign country in which the participant may reside.

### ***Non-statutory Stock Options***

No taxable income is reportable when a non-statutory stock option is granted to a participant. Upon exercise, the participant will recognize ordinary income in an amount equal to the excess of the fair market value (on the exercise date) of the shares purchased over the exercise price of the option. Any additional gain or loss recognized upon any later disposition of the shares will be capital gain or loss, which may be long- or short-term depending on the holding period. As a result of Section 409A of the Internal Revenue Code, however, non-statutory stock options granted with an exercise price below the fair market value of the underlying stock may be taxable to a participant before he or she exercises an award. As of the date of this proxy, how such awards will be taxed is unclear.

### ***Incentive Stock Options***

No taxable income is reportable when an incentive stock option is granted or exercised, unless the alternative minimum tax rules apply, in which case taxation occurs upon exercise. If the participant exercises the option and then later sells or otherwise disposes of the shares more than two years after the grant date and more than one year after the exercise date, the difference between the sale price and the exercise price will be taxed as capital gain or loss. If the participant exercises the option and then later sells or otherwise disposes of the shares before the end of the two- or one-year holding periods described above, he or she generally will have ordinary income at the time of the sale equal to the fair market value of the shares on the exercise date (or the sale price, if less) minus the exercise price of the option.

### ***Stock Appreciation Rights***

No taxable income is reportable when a stock appreciation right is granted to a participant. Upon exercise, the participant will recognize ordinary income in an amount equal to the amount of cash received and the fair market value of any shares received. Any additional gain or loss recognized upon any later disposition of the shares would be

capital gain or loss.

***Restricted Stock, Performance Units and Performance Shares***

A participant will not have taxable income upon grant of restricted stock, performance units or performance shares, unless he or she elects to be taxed at that time. Instead, he or she will recognize ordinary income at the time of vesting equal to the fair market value (on the vesting date) of the shares or cash received minus any amount paid for the shares.

**Table of Contents*****Tax Effect for the Company***

Intevac generally will be entitled to a tax deduction in connection with an Award under the 2004 Plan in an amount equal to any ordinary income realized by a participant at the time the participant recognizes such income (for example, upon the exercise of a non-statutory stock option). Special rules limit the deductibility of compensation paid to our Chief Executive Officer and to each of our four most highly compensated executive officers, as discussed above under Performance Goals .

**Amendment and Termination of the 2004 Plan**

The Board generally may amend or terminate the 2004 Plan at any time and for any reason. Amendments will be contingent on stockholder approval if required by applicable law or stock exchange listing requirements. By its terms, the 2004 Plan automatically will terminate in 2014, although any Awards outstanding at that time will continue for their term.

**Awards to be Granted to Certain Individuals and Groups**

The number of Awards that an employee or consultant may receive under the 2004 Plan is in the discretion of the Committee and therefore cannot be determined in advance. Our executive officers and our non-employee directors have an interest in this proposal, because they are eligible to receive discretionary Awards under the 2004 Plan.

As of the date of this proxy statement, there has been no determination by the Committee with respect to future awards under the 2004 Plan. Accordingly, future awards are not determinable. The following table, however, sets forth information with respect to the grant of options under the 2004 Plan to the executive officers named in the Summary Compensation Table below, to all current executive officers as a group, to all non-employee directors as a group and to all other employees as a group during the Company's last fiscal year:

<b>Name of Individual or Group</b>	<b>Number of Shares Granted</b>	<b>Average per Share Exercise Price</b>
Kevin Fairbairn	75,000	\$ 16.13
Charles B. Eddy	25,000	16.13
Michael Barnes	120,000	15.81
Luke Marusiak	25,000	16.13
Ralph Kerns	25,000	16.13
All executive officers, as a group	340,000	16.32
All directors who are not executive officers, as a group	70,000	22.18
All employees who are not executive officers, as a group	532,600	18.75

**Summary**

We believe strongly that approval of the amendment to the 2004 Plan is essential to our continued success. Awards such as those provided under the 2004 Plan constitute an important incentive for our key employees and other service providers and help us to attract, retain and motivate people whose skills and performance are critical to our success. Our employees are our most valuable assets. We strongly believe that the 2004 Plan is essential for us to compete for talent in the labor markets in which we operate.

**Required Vote**

The affirmative vote of the holders of a majority of the shares represented and voting at the Annual Meeting (provided that that vote also constitutes the affirmative vote of a majority of the required quorum) will be required for approval of the amendment to add an additional 900,000 shares to the Intevac 2004 Equity Incentive Plan.

**The Board of Directors recommends that shareholders vote FOR the adoption of the amendment to add an additional 900,000 shares to the Intevac 2004 Equity Incentive Plan.**

**Table of Contents****PROPOSAL NO. 4:****RATIFICATION OF INDEPENDENT PUBLIC ACCOUNTANTS**

The Audit Committee of the Board of Directors has selected Grant Thornton LLP as our independent public accountants for the fiscal year ending December 31, 2007. Grant Thornton LLP began auditing our financial statements in 2000. Its representatives are expected to be present at the Annual Meeting, will have an opportunity to make a statement if they desire to do so, and will be available to respond to appropriate questions.

**Required Vote**

Shareholder ratification of the selection of Grant Thornton LLP as Intevac's independent public accountants is not required by our Bylaws or other applicable legal requirements. However, the Board is submitting the selection of Grant Thornton LLP to the shareholders for ratification as a matter of good corporate practice. If the shareholders fail to ratify the selection, the Audit Committee will reconsider whether or not to retain that firm. Even if the selection is ratified, the Audit Committee in its discretion may direct the appointment of a different independent accounting firm at any time during the year, if it determines that such a change would be in the best interests of Intevac and its shareholders.

The affirmative vote of the holders of a majority of the shares represented and voting at the Annual Meeting (provided that that vote also constitutes the affirmative vote of a majority of the required quorum) will be required to ratify the selection of Grant Thornton LLP as Intevac's independent public accountants for the year ending December 31, 2007.

**The Board of Directors recommends that shareholders vote FOR the proposal to ratify the selection of Grant Thornton LLP as Intevac's independent public accountants for the fiscal year ending December 31, 2007.**

**Principal Accountant Fees and Services**

The following table presents fees billed for professional audit services and other services rendered to us by Grant Thornton LLP for the years ended December 31, 2006 and 2005.

	<b>2006</b>	<b>2005</b>
Audit Fees(1)	\$ 901,601	\$ 747,763
Audit-Related Fees(2)	41,955	4,416
Tax Fees(3)	45,575	29,745
All Other Fees(4)	211,860	18,387
Total Fees	\$ 1,200,991	\$ 800,311

- (1) Audit fees consist of fees billed for professional services rendered for the audit of our consolidated annual financial statements and review of the interim consolidated financial statements included in our Quarterly Reports on Form 10-Q and fees for services that are normally provided by Grant Thornton LLP in connection with statutory and regulatory filings or engagements. In addition, audit fees included those fees related to Grant Thornton's audit of the effectiveness of our internal controls over financial reporting pursuant to Section 404 of

the Sarbanes-Oxley Act.

- (2) Audit-related fees consist primarily of accounting consultations that are related to the performance of our audit or review of our consolidated financial statements, as well as services rendered in connection with SEC filings.
- (3) Tax fees consisted of fees billed for tax compliance, consultation and planning services.
- (4) All other fees include a Research & Development Tax Credit Study in 2006 and assistance in responding to audits by the State of California Franchise Tax Board and the State of California Board of Equalization in 2005.

**Table of Contents**

In making its recommendation to ratify the appointment of Grant Thornton LLP as our independent auditor for the fiscal year ending December 31, 2007, the Audit Committee has considered whether services other than audit and audit-related services provided by Grant Thornton LLP are compatible with maintaining the independence of Grant Thornton LLP and has determined that such services are so compatible.

**Pre-Approval of Audit and Permissible Non-Audit Services**

Our Audit Committee approves in advance all engagements with Grant Thornton LLP, including the audit of our annual financial statements, the review of the financial statements included in our Quarterly Reports on Form 10-Q and Trust and tax compliance services. Fees billed by Grant Thornton LLP are reviewed and approved by the Audit Committee on a quarterly basis.

**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth certain information regarding the ownership of our Common Stock as of February 14, 2007, for each person or entity who is known by us to own beneficially more than 5% of the outstanding shares of our Common Stock, each of the executive officers named in the Summary Compensation Table on page 40, each of our directors and all directors and executive officers of Intevac as a group.

	<b>Common Stock Beneficially Owned(2)</b>	<b>Percentage Beneficially Owned(3)</b>
<b>Principal Stockholders. Executive Officers and Directors(1)</b>		
<b>5% Stockholders:</b>		
Barclays Global Investors(4)	1,184,736	5.6%
T. Rowe Price Associates, Inc(5)	2,098,200	9.9%
<b>Named Executive Officers:</b>		
Kevin Fairbairn(6)	241,887	1.1%
Charles B. Eddy(7)	87,856	*
Michael Barnes(8)	32,864	*
Luke Marusiak(9)	42,819	*
Ralph Kerns(10)	34,674	*
<b>Directors:</b>		
David S. Dury	30,000	*
Stanley J. Hill(11)	18,000	*
Robert Lemos(12)	58,000	*
Arthur L. Money(13)	50,000	*
Norman H. Pond(14)	791,985	3.7%
Ping Yang(15)	7,500	*
All directors and executive officers as a group (13 persons)(16)	1,395,754	6.4%

\* Less than 1%

(1) Unless otherwise indicated in their respective footnote, the address for each listed person is c/o Intevac, Inc., 3560 Bassett Street, Santa Clara, CA 95054



- (2) The number and percentage of shares beneficially owned is determined in accordance with Rule 13d-3 of the Exchange Act, and the information is not necessarily indicative of beneficial ownership for any other purpose. Under such rule, beneficial ownership includes any shares over which the individual or entity has the right to acquire within 60 days of February 14, 2007, through the exercise of any stock option or other right. Unless otherwise indicated in the footnotes, each person or entity has sole voting and investment power (or shares such powers with his or her spouse) with respect to the shares shown as beneficially owned.
- (3) The total number of shares of Common Stock outstanding as of February 14, 2007 was 21,296,151.

**Table of Contents**

- (4) Includes (i) 562,753 shares beneficially owned by Barclays Global Investors, NA, (ii) 608,510 shares beneficially owned by Barclays Global Fund Advisors and (iii) 13,473 shares beneficially owned by Barclays Global Investors, LTD. The address of Barclays Global Investors, NA is 45 Fremont Street, San Francisco, CA 94105. This information was obtained from a filing made with the SEC pursuant to Section 13(g) of the Exchange Act on January 23, 2007.
- (5) These securities are owned by various individual investors and institutional investors which T. Rowe Price Associates, Inc. (Price Associates) serves as investment advisor with power to direct investment and/or sole power to vote the securities. For purposes of the reporting requirements of the Securities Exchange Act of 1934, Price Associates is deemed to be beneficial owner of such securities; however, Price Associates expressly disclaims that it is, in fact, the beneficial owner of such securities. The address of Price Associates is 100 E. Pratt Street, Baltimore, Maryland 21202. This information was obtained from a filing made with the SEC pursuant to Section 13(g) of the Exchange Act on February 14, 2007.
- (6) Includes 224,769 shares subject to options exercisable within 60 days of February 14, 2007.
- (7) Includes 68,266 shares held by the Eddy Family Trust DTD 02/09/00, whose trustees are Charles Brown Eddy III and Melissa White Eddy.
- (8) Includes 32,500 shares subject to options exercisable within 60 days of February 14, 2007.
- (9) Includes 39,500 shares subject to options exercisable within 60 days of February 14, 2007.
- (10) Includes 30,000 shares subject to options exercisable within 60 days of February 14, 2007.
- (11) Includes 18,000 shares subject to options exercisable within 60 days of February 14, 2007.
- (12) Includes 55,000 shares subject to options exercisable within 60 days of February 14, 2007.
- (13) Includes 50,000 shares subject to options exercisable within 60 days of February 14, 2007.
- (14) Includes 759,628 shares held by the Norman Hugh Pond and Natalie Pond Trust DTD 12/23/80 and 22,357 shares held by the Pond 1996 Charitable Remainder Unitrust, both of whose trustees are Norman Hugh Pond and Natalie Pond.
- (15) Includes 7,500 shares subject to options exercisable within 60 days of February 14, 2007.
- (16) Includes 457,269 shares subject to options exercisable within 60 days of February 14, 2007.

**SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE**

Section 16(a) of the Securities and Exchange Act of 1934 requires our directors and executive officers, and persons who own more than ten percent of a registered class of our equity securities to file with the Securities and Exchange Commission initial reports of ownership on Form 3, and reports of changes in ownership on Form 4 or Form 5, of our Common Stock and other equity securities. Officers, directors and greater than ten percent shareholders are required by SEC regulations to furnish Intevac with copies of all Section 16(a) forms they file.

Based solely upon review of the copies of such reports furnished to us and written representations that no other reports were required, we believe that during the fiscal year ended December 31, 2006, our officers, directors and holders of more than ten percent of our Common Stock complied with all Section 16(a) filing requirements, with the following exceptions:

- (1) Mr. Aebi filed one late report on a Form 4 covering the exercise of 7,500 shares from a stock option.
- (2) Ms. Burk filed one late report on a Form 4, covering the sale of 7,500 shares of our Common Stock.
- (3) Mr. Lambeth, a former director, filed one late report on a Form 4, covering the sale of 10,000 shares of our Common Stock.

**Table of Contents**

**EXECUTIVE COMPENSATION AND RELATED INFORMATION**  
**Compensation Discussion and Analysis**

**Introduction**

Intevac, Inc. ( Intevac or the Company ), headquartered in Santa Clara, California, is the world's leading provider of disk sputtering equipment to manufacturers of magnetic media used in hard disk drives. Intevac is also a developer and provider of technology for extreme low light imaging sensors, cameras and systems. In the fiscal year ended December 31, 2006, Intevac's revenues were \$260 million, up 89% from the prior year, and net income increased 184% to \$46 million.

Intevac operates in a high-technology industry, that is characterized by rapidly changing market dynamics (in terms of technology, competitors and customers) and is extremely competitive for talent. In order to be competitive for executives in this market, the Compensation Committee of the Board of Directors (the Compensation Committee ) believes that the compensation programs for our executive officers need to be designed to attract, retain and motivate high-caliber executives. More specifically, the objectives of the compensation programs are to:

Offer a total compensation opportunity that takes into consideration the compensation practices of other companies with which Intevac competes for executive talent;

Provide annual variable incentive awards that take into account Intevac's overall financial performance relative to corporate objectives and that are also based on team and individual contributions; and

Provide significant equity-based, long-term incentives to align the financial interests of the executive officers with those of our shareholders.

The specific compensation principles, components, and decisions designed to achieve these objectives during 2006 are discussed in more detail below.

**Oversight of Executive Compensation**

The executive compensation program is overseen by the Compensation Committee. The role of the Compensation Committee is to act for the Board to oversee compensation of our executive officers and employees and approve and evaluate the executive officers' compensation plans. The specific responsibilities of the Compensation Committee related to executive compensation include:

Approving and evaluating compensation plans for the executive officers (excluding the Chief Executive Officer and Chairman), including:

Base salary

Annual executive bonuses, goals, and payouts

Equity compensation guidelines

Employment agreements and severance provisions (if any)

Any other benefits or employment arrangements for executives

Reviewing the compensation plans, payouts and arrangements for the Chief Executive Officer and Chairman and making recommendations for approval by the Board of Directors

Approving stock option grants and administering the 2004 Equity Incentive Plan or any previous or subsequent plans

Reviewing this Compensation Discussion and Analysis and recommending its inclusion in our Proxy Statement

Overseeing succession plans

The Compensation Committee also recommends director compensation to the Board of Directors.

## **Table of Contents**

The Compensation Committee's responsibilities are further defined in its Charter, which is available through our Internet home page, located at [www.intevac.com](http://www.intevac.com).

### **Executive Compensation Philosophy and Core Principles**

Our compensation structure is designed to attract, retain and motivate high-performing executives. Our general compensation philosophy is that total cash compensation should vary based on achievement of financial and non-financial performance objectives and that long-term incentive compensation should be closely aligned with shareholders' interests through the use of stock-based compensation. Our compensation philosophy is to place a significant portion of compensation at risk based on the performance of the Company and the individual, generally increasing the portion at risk with the responsibility level of the executive.

More specifically, the guiding principles of Intevac's compensation plan design and administration are as follows:

Provide a total compensation package that is generally competitive with our peer group, taking into account differing company sizes and other factors as appropriate.

Align executive compensation with Company performance:

A significant portion of total compensation is tied to annual bonuses, which are dependent on the Company's annual profitability and each executive's performance relative to predetermined business objectives and target financial results set at the beginning of the fiscal year.

A significant portion of total compensation is tied to stock options, which we believe focuses each executive on driving shareholder value over the vesting period of our stock options.

The overall plan is designed to pay executive compensation that will generally be above peer company executive compensation when Intevac's financial performance is above peer company financial performance and to pay executive compensation below peer company executive compensation when Intevac's financial performance is below that of peer companies.

Increase the portion of total compensation based on performance based bonuses and stock options relative to base pay with increasing executive responsibility level.

Align each executive's goals with those of other executives to encourage a team approach to problem solving.

Align executive's interests with those of shareholders.

Provide clear guidelines for each compensation element (base pay, executive incentive pay and stock options), but give the Compensation Committee flexibility to make final decisions based on management recommendations (other than for the Chief Executive Officer and Chairman), and other factors such as experience, contribution to business success and retention needs.

Provide the same benefits to executives as provided to other employees, i.e. executives do not generally receive non-compensation, non-equity special perquisites and benefits.

Executive compensation consists of salary, annual cash incentives (bonus) based on annual results, and stock options with multiple-year (typically four-year) vesting. Each of these elements is described in more detail in the following

sections.

### **Compensation Committee Process**

When making individual compensation decisions for executives, the Compensation Committee takes many factors into account, including market pay data as well as each individual's skill, experience, and impact on the organization. The Compensation Committee relies significantly on the Chief Executive Officer's input and recommendations when evaluating these factors relative to the executive officers other than the Chief Executive Officer and Chairman. The Compensation Committee is responsible for approving all compensation arrangements

## **Table of Contents**

for Named Executive Officers and senior management of the Company, except for the Chief Executive Officer and Chairman.

All deliberations relating to the Chief Executive Officer's pay are made by the Compensation Committee in executive session, without the Chief Executive Officer present. In assessing the Chief Executive Officer's pay, the Compensation Committee considers the performance of the Company, the Chief Executive Officer's contribution to that performance, and other factors mentioned above for any other executive. The Compensation Committee reviews the Chief Executive Officer's salary, incentive plan payment (consistent with the terms of the plan as described below) and long-term incentive awards each year and makes recommendations to the full Board of Directors for approval.

The Compensation Committee and management jointly engaged the outside services of Mercer Human Resource Consulting in December 2006 to review the Company's Executive Compensation Program relative to the market data and based on Mercer's experience. Mercer reported in January 2007 on target pay levels relative to base salaries, total cash compensation (base plus bonus) and total direct compensation and on pay program designs.

## **Competitive Market Data**

The Compensation Committee evaluates the competitive market for pay for Intevac's executives with the assistance of our human resources department and outside consultants hired by the Compensation Committee. The human resources department and the Compensation Committee's advisors utilize executive compensation data drawn from targeted peer companies (the Peer Companies) and from nationally recognized surveys of executive pay among high-technology companies, with an emphasis on similarly-sized technology companies and companies with which Intevac competes for executive talent. The market compensation levels for comparable positions are examined as part of the process to determine base salary, target incentives and annual stock option grants.

The specific Peer Companies used by Intevac (along with relevant compensation surveys) to evaluate market compensation positioning for executives in making 2006 compensation decisions were:

ADE Corporation  
CyberOptics Corporation  
Electroglas, Inc.  
Kopin Corporation  
Mattson Technology, Inc.  
Photon Dynamics, Inc.  
Therma-Wave, Inc.

August Technology Corporation  
Electro Scientific Industries  
FSI International, Inc.  
LTX Corporation  
Nanometrics Incorporated  
Pixelworks, Inc.  
Ultratech, Inc.

These companies were selected based on their global presence, technical sophistication, and global manufacturing and sales distribution. In addition, the Compensation Committee reviewed the number of equity shares granted to each level of executives, directors and employees among the following companies before making final decisions on stock option grants during 2006:

ADE Corporation  
Electro Scientific Industries  
Hutchinson  
LTX Corporation  
Photon Dynamics, Inc.  
Veeco

Brooks Automation  
FEI  
Kopin Corporation  
Mattson Technology, Inc.  
Ultratech, Inc.  
Wind River



The additional companies were selected based on similarly-sized technology companies.

**Compensation Components**

The three major components of Intevac's executive officer compensation are:

Base salary;

**Table of Contents**

Performance-based annual bonus (the Executive Incentive Plan), which is paid in cash; and

Periodic grants of long-term, equity-based incentives, currently stock options with four-year vesting,

With the exception of the Company's Chief Executive Officer, Intevac has not entered into employment agreements with any of the executive officers. The Company does not provide any benefits or other perquisites to executives other than the basic health and welfare benefits available to employees generally.

***Base Salary***

The Company's philosophy is that base salaries should meet the objective of attracting and retaining the executive talent needed to run the business by providing a level of regular cash compensation for day-to-day responsibilities and services to the Company that is commensurate with the contribution and impact of each executive. Therefore, the Compensation Committee determines the base salary and annual increases for each executive based on the individual's level of responsibility, skill, experience, and performance.

Base salary adjustments can affect the value of other compensation elements. A higher base salary may result in a higher annual incentive, assuming the same level of achievement against goals. Mr. Fairbairn's base salary also affects the level of his severance and change-in-control benefit, per his employment agreement, as discussed below.

In February 2006, Mr. Fairbairn's base salary was increased from \$363,635 to \$381,825 based on the Company's strong financial and operational performance in 2005. Revenues increased to \$137 million in 2005 from \$70 million in 2004 and orders increased to \$211 million compared to \$37 million in 2004.

***Bonus:***

The Company provides an annual cash bonus to executive officers and other management employees. The total amount payable under the Executive Incentive Plan (EIP) is determined based on the Company's financial performance. The objective of EIP is to align an executive's pay results with the actual short-term business performance of the Company in achieving financial and non-financial objectives.

*Target Bonuses:* Executive officers and other EIP participants are assigned a Target Bonus, computed by multiplying each EIP participant's base pay times their Target Bonus Percentage. Target Bonus Percentages are determined based on competitive market data, internal equity considerations, and the degree of difficulty associated with achieving plan performance levels. For 2006, Target Bonus Percentages for the CEO and the other Named Executive Officers were as follows:

<b>Executive</b>	<b>Target Bonus as a Percent of Base Salary</b>
Kevin Fairbairn, Chief Executive Officer, President	200%
Charles B. Eddy III, Chief Financial Officer, Principal Accounting Officer, Secretary, Treasurer, Vice President of Administration and of Finance	70%
Luke Marusiak, Chief Operating Officer	70%
Michael Barnes, Chief Technical Officer	70%

Ralph Kerns, Vice President, Business Development

70%

*Incentive Plan Funding:* The size of the pool from which EIP bonuses are paid (the EIP Bonus Pool ) is calculated by multiplying a percentage (the Bonus Pool Percentage ) times Intevac's annual pre-tax earnings. The Compensation Committee sets the Bonus Pool Percentage at the beginning of each year after taking into consideration the Company's planned profitability, the total amount required to pay EIP bonuses at the target level and competitive survey data on incentive bonuses. Accordingly, under or over achievement of annual plan pre-tax profit target results in a reduction or increase to the EIP Bonus Pool. If there is no pre-tax profit, then there is no EIP Bonus Pool and no EIP bonus payments are made. The Compensation Committee reserves the right to exclude any extraordinary or unusual items, gains or losses when determining the Bonus Pool Percentage.

## **Table of Contents**

For example, in early 2006, the Bonus Pool Percentage approved by the Compensation Committee when multiplied by the Company's projected 2006 pretax earnings per the Company's annual operating plan, did not provide sufficient funding to pay EIP bonuses at the target level. Accordingly, management had to exceed 2006 plan profitability in order to earn EIP bonuses at the target level. However, actual pretax profits for 2006 were more than twice the company's original pretax profit projection and resulted in EIP bonuses that were significantly higher than target.

The Incentive Pool Factor is calculated at the end of the plan period and is based upon the size of the Bonus Pool relative to anticipated bonus payments. For example, if the Bonus Pool only has enough funds to pay 50% of all anticipated bonus payments, then the Incentive Pool Factor will be 50%. Conversely, if the Company beats its plan and the resulting Bonus Pools is 150% funded, then the Incentive Pool Factor would be 150%.

*Individual Allocation:* The Bonus Pool is shared by director-level employees, vice presidents, the chief operating officer, the chief technical officer, the chief financial officer and the chief executive officer. Each participant is assigned a Target Bonus Percentage as a percentage of base salary, with the individual target varying based on level of responsibility. The allocation of the actual bonus payment for each individual is calculated by applying the Incentive Pool Factor and a management by objectives factor (the MBO Performance Factor) to each participant's Target Bonus Percentage. For example, if a participant's base pay earned during plan year was \$200,000 and their Target Bonus Percentage was 70%, then their Target Bonus would be \$140,000. If MBO performance was 90% and the Incentive Pool Factor was 120%, then the actual bonus result would be \$151,200.

MBO goals and weighting factors are established for each participant in four areas:

*Business Results:* Goals include items such as orders, revenues, profitability, cash management, quality related metrics, cycle-time metrics and other finance related metrics that may be targeted for improvement.

*Market Development:* Goals include items such as market share, new customers gained for particular products, and completion of comprehensive marketing and sales plans for gaining additional business or higher gross margins.

*Product Excellence:* Goals include items such as target completion dates for new products or improved products, material cost and reliability goals for new products, product yield improvements, field product performance and other measures as appropriate to encourage product excellence for the Company.

*Strategic Initiatives:* Goals include items such as business process improvements, employee reviews, employee development, safety goals and other measures needed to support the growth of the Company.

Metrics with clear performance objectives are established in these areas for each of our two business groups and for each individual at the beginning of the year. These MBO plans are approved by the Compensation Committee in the first quarter of the fiscal year. All MBO participants within a business group (Equipment or Imaging) share some common MBO goals tied to their specific business group performance, but the goals are weighted differently for each individual. The weighting factor of each MBO goal reflects the ability of a participant to impact results. Shared goals reinforce the teamwork required to achieve results. MBO results are evaluated at the end of each year based on performance against the goals established in the first quarter, and adjusted on a qualitative basis by the CEO and approved by the Compensation Committee. The MBO Performance Factor for each EIP participant is determined by calculating a weighted average of that individual's performance against their MBO goals.

The MBO assessment for the Chief Executive Officer is based upon a weighting of the aggregate Equipment and Imaging business MBO results. Other corporate MBO participants' results are based upon weighting of business group

results plus MBO results relating to their corporate responsibility.

The Compensation Committee reserves the right to make adjustments to these formula-based payouts, as it deems appropriate, to maintain both appropriate pay-for-performance equity and competitive pay practices.

**Table of Contents**

***Stock Options:***

The goal of Intevac's executive stock options is to align the interests of the Company's executives with the long-term interests of the Company's shareholders and to provide executives with incentive to manage the Company from the perspective of an owner with an equity stake in the business.

*Stock Option Terms:* The Company's stock options allow our executives to acquire shares of our Common Stock at a fixed price per share (the closing market price on the grant date) and have a 10-year term (subject to earlier termination following the executive's cessation of service with Intevac). Options granted to executives vest in four equal annual installments, as measured from the option grant date.

*Stock Option Grants:* The Compensation Committee's grants options to executives and certain other key employees shortly after their start date in accordance with the Company's 2004 Equity Incentive Plan. Guidelines for the number of options granted are reviewed annually and changes are made based on market data. The Compensation Committee typically grants additional stock options annually to executives and other selected employees.

The Chief Executive Officer approves stock option grants recommended by human resources for each employee, including executives other than the Chief Executive Officer, prior to submission to the Compensation Committee for approval. The Compensation Committee approves the grants at meetings or by unanimous written consent. In the case of written consents, the grant date is the date of the consent, or such later date as specified in the consent. In approving individual grants, the Compensation Committee takes into account each individual's recent performance, level of responsibility, job assignment, the competitive climate, market data and other factors that the Compensation Committee may deem significant, at its discretion.

In order to determine the overall level of stock option grants to executives, employees, and directors, the Compensation Committee reviews factors such as outstanding stock options, the number of shares in the 2004 Equity Incentive Plan available to grant, stock option overhang as a percent of Common Stock outstanding, competitive market practices and the projected compensation expense related to employee stock options.

*Timing of Option Grants:* Proposed option grants for new employees that have started their employment at the Company are proposed by human resources to the Chief Executive Officer and then submitted monthly to the Compensation Committee for approval. Stock option grants for these new employees are submitted for approval each month by unanimous written consent to the Compensation Committee, with options typically granted on the third Thursday of each month. The option price is set based on the closing stock price the day the option is granted.

For annual renewal grants to executives and key employees, grants are reviewed at a Compensation Committee meeting. The timing of the grant depends on business conditions, company performance, the competitive climate, market data, cost of the grants and other appropriate factors as determined by the Compensation Committee. Annual renewal grants are only made on days when the Company's Trading Window for insiders is open. The Company's Trading Window opens the third business day after quarterly earnings have been released, and closes at the end of the last day of the second month of each quarter. The date of annual option grants to members of the Board of Directors is the first trading day following the Annual Meeting of the Company during which the Company's Trading Window is open.

The Company's policy is not to make stock option grants during such times as management and/or the Compensation Committee may be in possession of material, non-public information. In 2006, all renewal grants were made on August 30, 2006.

**Benefits and Perquisites**

The Company provides its executives the same benefits and perquisites that it offers its employees. These standard employee benefits include participation in the Company's 401(k) plan, medical, dental, and life insurance benefits, each with the same terms and conditions available to employees generally. The Company does not provide any benefits or perquisites to the executive officers that are not available to the majority of employees.

**Table of Contents**

**Termination of Employment and Severance Arrangements**

With the exception of Mr. Fairbairn, none of Intevac's executive officers have an employment agreement with the Company. Employment of all of our executive officers may be terminated at any time at the discretion of the Board of Directors. The terms of Mr. Fairbairn's employment are specified in his offer letter of employment. The Compensation Committee believes that entering into the employment agreement with Mr. Fairbairn was necessary to attract and retain Mr. Fairbairn.

*Employment Agreement:* For Mr. Fairbairn, the terms of his employment agreement include the following:

In the event of the involuntary termination from his position as President and Chief Executive Officer for any reason not involving good cause, conditioned upon execution of a waiver and release of claim, the Company will continue to pay his base salary for twelve (12) months following such termination.

In the event of a Change of Control after which Intevac stock does not exist (such as purchase of the Company for cash), all of Mr. Fairbairn's unvested options outstanding at that time will immediately vest.

In the event of a Change of Control after which Intevac stock survives, Mr. Fairbairn may either elect to retain his unvested options or to accelerate vesting as in the preceding sentence.

In the event of a Change of Control in which stock in the acquiring company is exchanged for Intevac stock and the acquiring company offers to substitute options in non-Intevac stock with an economic value equal to all of Mr. Fairbairn's unvested Intevac options, he may either elect to accept the new stock options or accelerate vesting as in the preceding two sentences.

In the event of a Change of Control where the acquiring company decides to not continue Mr. Fairbairn's position, the Company will pay Mr. Fairbairn an amount equal to twenty-four (24) months of his base salary in one lump sum within thirty days after the consummation of the Change of Control transaction.

The Compensation Committee believes that the terms of this agreement with the CEO support the goals of attracting and retaining highly talented individuals by clarifying the terms of employment and reducing the risks to the executive in situations where the Company may undergo a merger or be acquired. In addition, the Compensation Committee believes that such an agreement aligns the interests of the CEO with the interests of shareholders if a qualified offer to acquire the Company is made, in that it is to the benefit of shareholders to have the Chief Executive negotiating in the best interests of the Company without regard to his personal financial interests.

*1995 Stock Option/Stock Issuance Plan:* Under the 1995 Stock Option/Stock Issuance Plan, unvested stock options would immediately accelerate in full if the employment of the executive were to be terminated either involuntarily or through a forced resignation within twelve months after any acquisition of Intevac.

*2004 Equity Incentive Plan:* Under the 2004 Equity Incentive Plan, all unvested options vest in full upon an acquisition of Intevac by merger or asset sale, unless the option is assumed by the acquiring entity. Each option also includes a limited stock appreciation right which provides the holder with a right, exercisable upon the successful completion of a hostile tender offer for fifty percent or more of Intevac's outstanding voting securities, to surrender the option to Intevac, to the extent the option is at that time exercisable for vested shares, in return for a cash distribution for each surrendered option share equal to the difference between the highest price per share of Common Stock paid in the hostile tender offer and the option exercise price.



The Board of Directors or its Compensation Committee, as administrator of the plan, has the authority to provide for the accelerated vesting of any or all outstanding options under the plan, including options held by our directors and executive officers, under such circumstances and at such times as the Compensation Committee deems appropriate, including in the event of termination of the executive or a change-in-control of Intevac.

**Compliance with Internal Revenue Code Section 162(m)**

Under Section 162(m) of the Internal Revenue Service Code, Intevac receives a federal income tax deduction for compensation paid to each of our Chief Executive Officer and the four other Named Executive Officers only if the compensation paid to the individual executive is less than \$1 million during any fiscal year or is performance-based as defined under Section 162(m). Intevac's 1995 Stock Option/Stock Issuance Plan, 2004 Equity Incentive Plan, and

**Table of Contents**

the Executive Incentive Plan permit our Compensation Committee to grant equity compensation that is considered performance-based and thus fully tax-deductible under IRC Section 162(m). Our Compensation Committee currently intends to continue seeking a tax deduction for all of our executive compensation, to the extent we determine it is in the best interests of Intevac.

**Compensation Committee Interlocks and Insider Participation**

The Compensation Committee of our Board of Directors was formed September 14, 1995 and during 2006 was comprised of Robert Lemos, Dr. Lambeth (until his resignation from the Board in April 2006), Arthur Money and Ping Yang. None of these individuals was at any time during fiscal 2006, or at any other time, an officer or employee of Intevac. None of our executive officers serves as a member of the board of directors or compensation committee of any other entity that has one or more executive officers serving as a member of our Board of Directors or Compensation Committee.

**Report of the Compensation Committee**

*The information contained in this report shall not be deemed to be soliciting material or to be filed with the SEC, nor shall such information be incorporated by reference into any past or future filing under the Securities Act or the Exchange Act, except to the extent Intevac specifically incorporates it by reference into such filing.*

The Compensation Committee oversees Intevac's compensation policies, plans and benefit programs. The Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis required by Item 402(b) of Regulation S-K with management. Based on such review and discussions, the Compensation Committee has recommended to the Board of Directors that the Compensation Discussion and Analysis be included in this proxy statement.

*This report is submitted by the members of the Compensation Committee.*

Robert Lemos (Chairman)  
Arthur L. Money  
Ping Yang

**Table of Contents****Summary Compensation Table**

The following table presents information concerning the total compensation of Intevac's Chief Executive Officer, Chief Financial Officer and each of the three most highly compensated officers during the last fiscal year (the "Named Executive Officers") for services rendered to Intevac in all capacities for the fiscal year ended December 31, 2006.

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards (\$)(1)	Non-Equity Incentive Plan Compensation (\$)(2)	Change in Pension Value and Nonqualified Deferred Compensation (\$)(3)	All Other Compensation (\$)(3)	Total (\$)
Kevin Fairbairn, President and Chief Executive Officer	2006	379,026			213,189	1,543,705		6,164	2,142,084
Charles B. Eddy III, Vice President and Chief Financial Officer	2006	225,598			90,263	320,669		6,164	642,694
Michael Barnes, Chief Technical Officer	2006	219,245			548,326	366,585		2,000	1,134,156
Luke Marusiak, Chief Operating Officer	2006	215,078			71,621	351,352		6,164	644,815
Ralph Kerns, Vice President, Business Development	2006	197,029			94,750	320,462		6,164	618,405

- (1) Amounts shown do not reflect compensation actually received by the named executive officer. Instead, the amounts shown are the compensation costs we recognized in fiscal 2006 for option awards as determined pursuant to FAS 123(R). These compensation costs reflect option awards granted in and prior to fiscal 2006. The assumptions used to calculate the value of option awards are set forth under Note 3 of the notes to Consolidated Financial Statements included in our Annual Report on Form 10-K for fiscal 2006 filed with the SEC on March 16, 2007.
- (2) Amounts consist of bonuses earned under Intevac's Management Incentive Plan for services rendered in fiscal 2006 and paid in 2007.
- (3) Amounts consist of (i) matching contributions we made under the tax-qualified 401(k) Plan, which provides for broad-based employee participation, and (ii) of compensation costs we recognized for participation in our Employee Stock Purchase Plan.



**Table of Contents****Grants of Plan-Based Awards**

The following table presents information concerning grants of plan-based awards to each of the Named Executive Officers during the fiscal year ended December 31, 2006.

Name	Grant Date	Threshold (\$)	Target (\$)	Maximum (\$)	Estimated Future Payouts Under Equity Incentive Plan Awards	All Other Stock Awards: Number of	All Other Option Awards: Number of	Exercise or Base Price of Option Awards (\$/Share)	Grant Date Fair Value of Stock Option and Option Awards (\$)(2)
						Shares of Stock or	Securities Underlying Options		
Kevin Fairbairn	08/30/06						75,000	16.13	721,980
	N/A								
Charles B. Eddy III	08/30/06						25,000	16.13	240,650
	N/A								
Michael Barnes	01/19/06						120,000	15.81	1,174,560
	N/A								
Luke Marusiak	08/30/06						25,000	16.13	240,650
	N/A								
Ralph Kerns	08/30/06						25,000	16.13	240,650
	N/A								

(1) Reflects threshold, target and maximum target bonus amounts for fiscal 2006 performance under the Management Incentive Plan, as described in Compensation Discussion and Analysis Base Salary and Variable Incentive Awards. The actual bonus amounts were determined by the Compensation Committee in February 2007, and are reflected in the Non-Equity Incentive Plan Compensation column of the 2006 Summary Compensation Table.

(2) Reflects the grant date fair value of each equity award computed in accordance with FAS 123(R). The assumptions used to calculate the value of option awards are set forth under Note 3 of the notes to Consolidated Financial Statements included in our Annual Report on Form 10-K for fiscal 2006 filed with the SEC on March 16, 2007.

**Table of Contents****Outstanding Equity Awards at Fiscal Year-End**

The following table shows all outstanding option awards held by each of the Named Executive Officers at the end of fiscal 2006. The following awards identified in the table below are also reported in the Grants of Plan-Based Awards table on the previous page: option awards with an expiration date of August 30, 2016 for each of the named executive officers other than Mr. Barnes, and an option award with an expiration date of January 19, 2016 for Mr. Barnes. We have not granted any stock awards.

Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Awards(1) Equity Incentive Plan Awards:		
			Number of Securities Underlying Unexercised Options (#) Unearned	Option Exercise Price (\$)	Option Expiration Date
Kevin Fairbairn	170,602	4,167(2)		2.63	01/24/2012
	50,000			14.00	02/19/2014
		50,000(3)		7.53	02/01/2015
		75,000(4)		16.13	08/30/2016
Charles B. Eddy III	1,000			3.20	10/19/2011
	6,666	13,334(5)		4.06	07/22/2014
		20,000(6)		7.72	02/08/2015
		25,000(7)		16.13	08/30/2016
Michael Barnes	2,500			12.66	09/09/2015
		120,000(8)		15.81	01/19/2016
Luke Marusiak	39,500			10.01	05/14/2014
		20,000(9)		7.72	02/08/2015
		25,000(10)		16.13	08/30/2016
Ralph Kerns	30,000	10,000(11)		7.65	08/21/2013
	10,000			9.31	06/23/2014
		20,000(12)		7.72	02/08/2015
		25,000(13)		16.13	08/30/2016

(1) Reflects options granted under the 2004 Equity Incentive Plan and the 1995 Stock Option Plan.

(2) Assuming continued employment with Intevac, the shares will become exercisable on January 24, 2007.

(3) Assuming continued employment with Intevac, the shares will become exercisable on February 1, 2009.

- (4) Assuming continued employment with Intevac, 18,750 shares will become exercisable on August 30 of each 2007, 2008, 2009 and 2010.
- (5) Assuming continued employment with Intevac, 6,666 and 6,668 shares will become exercisable on July 22 of 2007 and 2008, respectively.
- (6) Assuming continued employment with Intevac, the shares will become exercisable on February 8, 2009.
- (7) Assuming continued employment with Intevac, 6,250 shares will become exercisable on August 30 of each 2007, 2008, 2009 and 2010.
- (8) Assuming continued employment with Intevac, 30,000 shares will become exercisable on January 19 of each 2007, 2008, 2009 and 2010.
- (9) Assuming continued employment with Intevac, the shares will become exercisable on February 8, 2009.
- (10) Assuming continued employment with Intevac, 6,250 shares will become exercisable on August 30 of each 2007, 2008, 2009 and 2010.
- (11) Assuming continued employment with Intevac, the shares will become exercisable on August 21, 2007.

**Table of Contents**

- (12) Assuming continued employment with Intevac, the shares will become exercisable on February 8, 2009.
- (13) Assuming continued employment with Intevac, 6,250 shares will become exercisable on August 30 of each 2007, 2008, 2009 and 2010.

**Option Exercises and Stock Vested at Fiscal Year End**

The following table shows all stock options exercised and value realized upon exercise, by the named executive officers during fiscal 2006. We have not granted any stock awards.

Name of Executive Officer	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)(1)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)
Kevin Fairbairn				
Charles B. Eddy III	18,500	270,474		
Michael Barnes				
Luke Marusiak	10,500	178,395		
Ralph Kerns				

- (1) The value realized equals the difference between the option exercise price and the fair value of Intevac common stock on the date of exercise, multiplied by the number of shares for which the options was exercised.

**EQUITY COMPENSATION PLAN INFORMATION**

The following table summarizes the number of outstanding options granted to employees and directors, as well as the number of securities remaining available for future issuance, under our equity compensation plans at December 31, 2006.

Plan Category	Number of Securities	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance
	to be Issued Upon Exercise of Outstanding Options, Warrants and Rights		Under Equity Compensation Plans (1)



Equity compensation plans approved by security holders(2)	2,354,215	\$	11.47	674,307
Equity compensation plans not approved by security holders		\$		
Total	2,354,215	\$	11.47	674,307

(1) Excludes securities reflected in column (a).

(2) Included in the column (c) amount are 378,937 shares available for future issuance under our 2003 Employee Stock Purchase Plan.

### CERTAIN TRANSACTIONS

In accordance with our Code of Business Conduct and Ethics and our Director Code of Ethics and the charter for the Audit Committee of the Board of Directors, our Audit Committee reviews and approves in advance in writing any proposed related person transactions. The most significant related person transactions, as determined by the Audit Committee, must be reviewed and approved in writing in advance by our Board of Directors. Any related person transaction will be disclosed in the applicable SEC filing as required by the rules of the SEC. For purposes of these procedures, related person and transaction have the meanings contained in Item 404 of Regulation S-K.

**Table of Contents**

We did not enter into any transactions and no relationships existed during the fiscal year ending December 31, 2006 which are required to be disclosed pursuant to Item 404 of Regulation S-K.

**EMPLOYMENT CONTRACTS, TERMINATION OF EMPLOYMENT  
AND CHANGE-IN-CONTROL AGREEMENTS**

None of our executive officers except Kevin Fairbairn has an employment agreement with us, and all of our executive officers' employment may be terminated at any time at the discretion of the Board of Directors. For Mr. Fairbairn, in the event of involuntary termination from his position as President and Chief Executive Officer for any reason not involving good cause, but subject to his execution of a waiver and release of claims that is acceptable to us, we will continue to pay his base salary for twelve months following termination. Upon a change of control of Intevac, all options held by Mr. Fairbairn will immediately vest in full unless the acquiring company assumes the options or substitutes new options and Mr. Fairbairn chooses not to accept the assumed or substituted options. In addition, in the event of involuntary termination of Mr. Fairbairn following a change of control, he will be entitled to receive a lump sum equal to twelve months of base salary. If his employment continues, he will be entitled to an amount equal to two times his annual salary after twelve months of employment.

Pursuant to the express provisions of the 1995 Stock Option/Stock Issuance Plan (the "1995 Option Plan"), the outstanding options under the 1995 Option Plan held by the Chief Executive Officer and our other executive officers would immediately accelerate in full, and all unvested shares of Common Stock at the time held by such individuals under the 1995 Option Plan would immediately vest, if their employment were to be terminated either involuntarily or through a forced resignation within twelve months after any acquisition of Intevac by merger or asset sale in which those options and shares did not otherwise vest. In addition, the Compensation Committee of the Board of Directors has the authority as administrator of the 1995 Option Plan to provide for the accelerated vesting of outstanding options under the 1995 Option Plan held by the Chief Executive Officer and our other executive officers, and the immediate vesting of all unvested shares of Common Stock at the time held by such individuals under the 1995 Option Plan, if their employment were to be terminated either involuntarily or through a forced resignation following a hostile take-over of Intevac effected through a successful tender offer for more than fifty percent of our outstanding Common Stock or through a change in the majority of the Board as a result of one or more contested elections for Board membership.

Under the 2004 Equity Incentive Plan, the Board of Directors or its Compensation Committee, as administrator of the plan, has the authority to provide for the accelerated vesting of outstanding options under the plan, including options held by our executive officers, under such circumstances and at such times as the Board or Committee deems appropriate, including in the event of termination of the optionee or a change in control of Intevac. Each option granted under the 2004 Equity Incentive Plan includes a limited stock appreciation right which provides the optionee with a right, exercisable upon the successful completion of a hostile tender offer for fifty percent or more of Intevac's outstanding voting securities, to surrender the option to Intevac, to the extent the option is at that time exercisable for vested shares, in return for a cash distribution per surrendered option share equal to the excess of (i) the highest price per share of Common Stock paid in the hostile tender offer over (ii) the option exercise price payable per share.

**AUDIT COMMITTEE REPORT**

*The information contained in this report shall not be deemed to be soliciting material or to be filed with the SEC, nor shall such information be incorporated by reference into any past or future filing under the Securities Act or the Exchange Act, except to the extent Intevac specifically incorporates it by reference into such filing.*

*Composition.* The Audit Committee currently consists of David S. Dury, Stanley J. Hill and Robert Lemos, each of whom is a non-employee director who the Board of Directors has determined meets the independence and other

requirements to serve on the Audit Committee under the listing standards of The Nasdaq Stock Market and rules of the SEC. The Board has also determined that each member of the committee is an audit committee financial expert as defined in Item 401 of Regulation S-K.

**Table of Contents**

*Responsibilities.* The Audit Committee operates under a written charter that has been adopted by the Board of Directors. The Audit Committee is responsible for overseeing our accounting and financial reporting processes, overseeing the audits of our financial statements and assisting the Board of Directors in oversight and monitoring of (i) the integrity of our financial statements, (ii) our compliance with legal and regulatory requirements, (iii) the qualifications, independence and performance of our external auditors, and (iv) our internal accounting and financial controls. Our management is responsible for maintaining our books of account and preparing periodic financial statements based thereon and the system of internal controls. The independent accountants are responsible for auditing our annual financial statements. The Audit Committee's responsibilities are further defined in its Charter, which is available on our website at [www.intevac.com](http://www.intevac.com).

*Review with Management and Independent Accountants.* In this context, the Audit Committee hereby reports as follows:

1. The Audit Committee has reviewed and discussed with management and the independent accountants our audited consolidated financial statements contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2006.
2. The Audit Committee has discussed with the independent accountants matters required to be discussed by Statement on Auditing Standards No. 61 (Communications with Audit Committees).
3. The Audit Committee has received from the independent accountants, Grant Thornton LLP, the written disclosures and the letter required by Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees), and the Audit Committee has discussed with Grant Thornton LLP the independent accountants independence.
4. The Audit Committee has considered whether the provision of services covered by Fees Paid To Accountants For Services Rendered is compatible with maintaining the independence of Grant Thornton LLP.

Based on the review and discussion referred to in paragraphs 1-4 above, the Audit Committee recommended to the Board of Directors, and the Board has approved, that the audited consolidated financial statements be included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2006, for filing with the SEC.

The Audit Committee has recommended to the Board that Grant Thornton LLP be selected as our independent accountants for the fiscal year ending December 31, 2007

*This report is submitted by the members of the Audit Committee.*

David S. Dury (Chairman)  
Stanley J. Hill  
Robert Lemos

**Table of Contents**

**OTHER BUSINESS**

The Board of Directors knows of no other business that will be presented for consideration at the Annual Meeting. If other matters are properly brought before the Annual Meeting, however, it is the intention of the persons named in the accompanying proxy to vote the shares represented thereby on such matters in accordance with their best judgment.

**SHAREHOLDER PROPOSALS**

Proposals of shareholders which are intended to be presented at our Annual Meeting of Shareholders to be held in 2008 must be received by Intevac no later than December 8, 2007 to be included in the proxy statement and proxy relating to that meeting. If a shareholder intends to raise a proposal at our 2008 Annual Meeting of Shareholders that is not eligible for inclusion in the proxy statement relating to the meeting and the shareholder fails to give us notice in accordance with the requirements set forth in the Securities Exchange Act by February 21, 2008, the proxy holders will be allowed to use their discretionary authority when and if the proposal is raised at our 2008 Annual Meeting.

**BY ORDER OF THE BOARD OF DIRECTORS**

CHARLES B. EDDY III

*Vice President, Finance and Administration, Chief Financial Officer, Treasurer and Secretary*

April 16, 2007

**FORM OF  
AGREEMENT AND PLAN OF MERGER  
OF  
INTEVAC, INC.  
(a Delaware corporation),  
AND  
INTEVAC, INC.  
(a California corporation)**

THIS AGREEMENT AND PLAN OF MERGER, dated as of \_\_\_\_\_, 2007 (the Agreement), is between Intevac, Inc., a Delaware corporation (Intevac Delaware), and Intevac, Inc., a California corporation (Intevac California). Intevac Delaware and Intevac California are sometimes referred to herein as the Constituent Corporations.

**RECITALS**

(1) Intevac Delaware is a corporation duly organized and existing under the laws of the State of Delaware with an authorized capital of 60,000,000 shares, 50,000,000 of which are designated Common Stock, par value \$0.001 per share, and 10,000,000 of which are designated Preferred Stock, par value \$0.001 per share. As of \_\_\_\_\_, 2007, 1,000 shares of Common Stock were issued and outstanding, all of which are held by Intevac California, and no shares of Preferred Stock were outstanding.

(2) Intevac California is a corporation duly organized and existing under the laws of the State of California with authorized capital of 60,000,000 shares of Common Stock, no par value per share, 50,000,000 of which are designated Common Stock, and 10,000,000 of which are designated Preferred Stock. As of March 31, 2007, (i) [ ] shares of Common Stock were issued and outstanding, (ii) [ ] shares of Common Stock were reserved for issuance pursuant to various equity incentive plans, and (iii) no shares of Preferred Stock were issued and outstanding.

(3) The Board of Directors of Intevac California has determined that, for the purpose of effecting the reincorporation of Intevac California in the State of Delaware, it is advisable and in the best interests of Intevac California and its shareholders that Intevac California merge with and into Intevac Delaware upon the terms and conditions herein provided.

(4) The respective Boards of Directors of Intevac Delaware and Intevac California have approved this Agreement and have directed that this Agreement be submitted to a vote of the holders of their respective securities entitled to vote by applicable law and, upon obtaining a favorable vote, be executed by the undersigned officers.

(5) The respective Boards of Directors of Intevac Delaware and Intevac California intend the reincorporation of Intevac California in the State of Delaware to constitute a plan of reorganization and to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Intevac Delaware and Intevac California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

**1) MERGER**

a) Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California Corporations Code, Intevac California shall be merged with and into Intevac Delaware (the Merger), the

separate existence of Intevac California shall cease, and Intevac Delaware shall be (and is herein sometimes referred to as) the Surviving Corporation. The name of the Surviving Corporation shall be Intevac, Inc.

A-1

---

## **Table of Contents**

b) *Filing and Effectiveness.* The Merger shall become effective when the following actions shall have been completed:

i) This Agreement and the Merger shall have been adopted and approved by the sole stockholder of Intevac Delaware and the shareholders of Intevac California in accordance with the requirements of the Delaware General Corporation Law and the California Corporations Code, respectively;

ii) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof;

iii) An executed Certificate of Merger, or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law, shall have been filed with the Secretary of State of the State of Delaware; and

iv) An executed Certificate of Merger, or an executed counterpart of this Agreement meeting the requirements of the California Corporations Code, shall have been filed with the Secretary of State of the State of California.

The date and time when the Merger shall become effective, as aforesaid, is herein called the Effective Time of the Merger.

c) *Effect of the Merger.* Upon the Effective Time of the Merger, the separate existence of Intevac California shall cease, and Intevac Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Time of the Merger, (ii) shall be subject to all actions previously taken by its and Intevac California's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of Intevac California in the manner as more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Time of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Intevac California in the same manner as if Intevac Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California Corporations Code.

## **2) CHARTER DOCUMENTS, DIRECTORS AND OFFICERS**

a) *Certificate of Incorporation.* The Certificate of Incorporation of Intevac Delaware in substantially the form attached hereto as Exhibit A shall be the Certificate of Incorporation of the Surviving Corporation, until duly amended in accordance with the provisions thereof and applicable law.

b) *Bylaws.* The Bylaws of Intevac Delaware in substantially the form attached hereto as Exhibit B shall be the Bylaws of the Surviving Corporation, until duly amended in accordance with the provisions thereof and applicable law.

c) *Directors and Officers.* The directors and officers of Intevac California immediately prior to the Effective Time of the Merger shall be the directors and officers of the Surviving Corporation, until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

## **3) MANNER OF CONVERSION OF STOCK**

a) *Intevac California Common Stock.* Upon the Effective Time of the Merger, each share of Intevac California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action



by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Common Stock, \$0.001 par value, of the Surviving Corporation.

b) *Intevac California Options, Stock Purchase Rights and Convertible Securities*. Upon the Effective Time of the Merger, the Surviving Corporation shall assume and continue the equity incentive plans (including without limitation the 2004 Equity Incentive Plan and the 2003 Employee Stock Purchase Plan) and all other employee

A-2

---

**Table of Contents**

benefit plans of Intevac California. Each outstanding and unexercised option, warrant or other right to purchase Intevac California Common Stock shall become an option, warrant or right to purchase the Surviving Corporation's Common Stock on the basis of one (1) share of the Surviving Corporation's Common Stock for every one (1) share of Intevac California Common Stock issuable pursuant to any such option, warrant or right, on the same terms and conditions and at an exercise price per share equal to the exercise price applicable to any such Intevac California option, warrant or right at the Effective Time of the Merger. A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options, warrants or rights equal to the number of shares of Intevac California Common Stock so reserved immediately prior to the Effective Time of the Merger.

c) Intevac Delaware Common Stock. Upon the Effective Time of the Merger, each share of Common Stock, \$0.001 par value, of Intevac Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Intevac Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

d) Exchange of Certificates.

i) After the Effective Time of the Merger, each holder of an outstanding certificate representing shares of Intevac California Common Stock may, at such stockholder's option, surrender the same for cancellation to [Computershare], as exchange agent (the Exchange Agent), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which the surrendered shares were converted as herein provided.

ii) Until so surrendered, each outstanding certificate theretofore representing shares of Intevac California Common Stock shall be deemed for all purposes to represent the number of whole shares of the Surviving Corporation's Common Stock into which such shares of Intevac California Common Stock were converted in the Merger. The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

iii) Each certificate representing Common Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Intevac California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

iv) If any certificate for shares of the Surviving Corporation's Common Stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

**4) GENERAL**

a) Covenants of Intevac Delaware. Intevac Delaware covenants and agrees that it will, on or before the Effective Time of the Merger:

- i) Qualify to do business as a foreign corporation in the State of California and in connection therewith irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California Corporations Code;
- ii) File any and all documents with the appropriate tax authority of the State of California necessary for the assumption by Intevac Delaware of all of the corporate and/or franchise tax liabilities of Intevac California; and
- iii) Take such other actions as may be required by the California Corporations Code.

**Table of Contents**

b) *Further Assurances.* From time to time, as and when required by Intevac Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Intevac California such deeds and other instruments, and there shall be taken or caused to be taken by Intevac Delaware and Intevac California such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Intevac Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Intevac California and otherwise to carry out the purposes of this Agreement, and the officers and directors of Intevac Delaware are fully authorized in the name and on behalf of Intevac California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

c) *Abandonment.* At any time before the Effective Time of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Intevac California or Intevac Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of Intevac California or by the sole stockholder of Intevac Delaware, or by both.

d) *Amendment.* The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretaries of State of the States of California and Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the shareholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class of shares or series thereof of such Constituent Corporation.

e) *Registered Office.* The registered office of the Surviving Corporation in the State of Delaware is located at 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801, and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

f) *Agreement.* Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 3560 Bassett Street, Santa Clara, California 95054, and copies thereof will be furnished to any shareholder of either Constituent Corporation, upon request and without cost.

g) *Governing Law.* This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California Corporations Code.

h) *Counterparts.* In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

**Table of Contents**

IN WITNESS WHEREOF, this Agreement, having first been approved by resolutions of the Boards of Directors of Intevac Delaware and Intevac California, is hereby executed on behalf of each of such corporation by their respective officers thereunto duly authorized.

INTEVAC, INC.  
a Delaware corporation

Name: By:  
Title:

INTEVAC, INC.  
a California corporation

Name: By:  
Title:

A-5

---

**Table of Contents**

**EXHIBIT A**

**CERTIFICATE OF INCORPORATION  
OF  
INTEVAC, INC.  
(Delaware)**

(See Appendix B)

A-6

---

**Table of Contents**

**EXHIBIT B**

**BYLAWS  
OF  
INTEVAC, INC.  
(Delaware)**

(See Appendix C)

A-7

---

**Table of Contents**

**Appendix B**

**FORM OF  
CERTIFICATE OF INCORPORATION**

**INTEVAC, INC.**

**ARTICLE I**

The name of the corporation is Intevac, Inc.

**ARTICLE II**

The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware (the "DGCL").

**ARTICLE III**

The address of the corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the registered agent at such address is The Corporation Trust Company.

**ARTICLE IV**

The name and mailing address of the incorporator are as follows:

Charles B. Eddy III  
Intevac, Inc.  
3560 Bassett Street  
Santa Clara, California 95054

**ARTICLE V**

The total number of shares of stock that the corporation shall have authority to issue is Sixty Million (60,000,000), consisting of Fifty Million (50,000,000) shares of Common Stock, \$0.001 par value per share, and Ten Million (10,000,000) shares of Preferred Stock, \$0.001 par value per share.

The undesignated Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the corporation is authorized to determine the designation and to fix the number of shares of any series of the undesignated Preferred Stock, and to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of undesignated Preferred Stock. Within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any such series of the undesignated Preferred Stock, the Board of Directors is further authorized to increase or decrease (but not below the number of shares of that series then outstanding) the number of shares of that series subsequent to the issue of shares of that series. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

**ARTICLE VI**



The number of directors that constitutes the entire Board of Directors shall be determined in the manner set forth in the Bylaws of the corporation.

**ARTICLE VII**

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws of the corporation.

**ARTICLE VIII**

The election of directors need not be by written ballot unless the Bylaws of the corporation shall so provide.

B-1

---

**Table of Contents**

**ARTICLE IX**

Special meetings of the stockholders of the corporation for any purpose or purposes may be called at any time by the president of the corporation, the chairman of the Board of Directors or a majority of the authorized number of directors or by the holders of shares entitled to cast not less than ten percent of the votes at the meeting, but such special meetings may not be called by any other person or persons. No action shall be taken by the stockholders of the corporation except at an annual or special meeting of the stockholders called in accordance with this Certificate of Incorporation or the Bylaws of the corporation, and no action shall be taken by the stockholders by written consent.

**ARTICLE X**

To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further limiting or eliminating the personal liability of directors, then the liability of a director of the corporation shall be limited or eliminated to the fullest extent permitted by the DGCL, as so amended.

The corporation shall have the power to indemnify, to the extent permitted by the DGCL, as it currently exists or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a **Proceeding**), by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

Neither any amendment nor repeal of this Article X, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article X, shall eliminate or reduce the effect of this Article X in respect of any matter occurring, or any action, suit or proceeding accruing or arising or that, but for this Article X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

**ARTICLE XI**

Except as provided in Article X above, the corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

\* \* \*

I, the undersigned, as the sole incorporator of the corporation, have signed this Certificate of Incorporation on \_\_\_\_\_, 2007.

Charles B. Eddy III  
Incorporator

**Table of Contents**

**Appendix C**

**FORM OF  
BYLAWS OF  
INTEVAC, INC.  
(a Delaware corporation)**

---

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE I CORPORATE OFFICES	4
1.1 REGISTERED OFFICE	4
1.2 OTHER OFFICES	4
ARTICLE II MEETINGS OF STOCKHOLDERS	4
2.1 PLACE OF MEETINGS	4
2.2 ANNUAL MEETING	4
2.3 SPECIAL MEETING	4
2.4 ADVANCE NOTICE PROCEDURES; NOTICE OF STOCKHOLDERS MEETINGS	5
2.5 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE	6
2.6 QUORUM	7
2.7 ADJOURNED MEETING; NOTICE	7
2.8 CONDUCT OF BUSINESS	7
2.9 VOTING	7
2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING	8
2.11 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING CONSENTS	8
2.12 PROXIES	8
2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE	8
2.14 INSPECTORS OF ELECTION	9
ARTICLE III DIRECTORS	10
3.1 POWERS	10
3.2 NUMBER OF DIRECTORS	11
3.3 ELECTION AND TERM OF OFFICE OF DIRECTORS	11
3.4 RESIGNATION AND VACANCIES	11
3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE	12
3.6 REGULAR MEETINGS	12
3.7 SPECIAL MEETINGS; NOTICE	12
3.8 QUORUM; VOTING	13
3.9 WAIVER OF NOTICE	13
3.10 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING	13
3.11 FEES AND COMPENSATION OF DIRECTORS	13
3.12 REMOVAL OF DIRECTORS	13
3.13 APPROVAL OF LOANS	14

**Table of Contents**

	<b>Page</b>
ARTICLE IV COMMITTEES	14
4.1 COMMITTEES OF DIRECTORS	14
4.2 COMMITTEE MINUTES	14
4.3 MEETINGS AND ACTION OF COMMITTEES	15
ARTICLE V OFFICERS	15
5.1 OFFICERS	15
5.2 APPOINTMENT OF OFFICERS	15
5.3 SUBORDINATE OFFICERS	16
5.4 REMOVAL AND RESIGNATION OF OFFICERS	16
5.5 VACANCIES IN OFFICES	16
5.6 CHAIRMAN OF THE BOARD	16
5.7 CHIEF EXECUTIVE OFFICER	16
5.8 PRESIDENT	17
5.9 VICE PRESIDENT	17
5.10 SECRETARY	17
5.11 CHIEF FINANCIAL OFFICER	17
5.12 AUTHORITY AND DUTIES OF OFFICERS	18
ARTICLE VI RECORDS AND REPORTS	18
6.1 MAINTENANCE AND INSPECTION OF RECORDS	18
6.2 REPRESENTATION OF SHARES OF OTHER CORPORATIONS	18
ARTICLE VII GENERAL MATTERS	19
7.1 CHECKS, DRAFTS, EVIDENCES OF INDEBTEDNESS	19
7.2 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS	19
7.3 STOCK CERTIFICATES; PARTLY PAID SHARES	19
7.4 SPECIAL DESIGNATION ON CERTIFICATES	20
7.5 LOST CERTIFICATES	20
7.6 CONSTRUCTION; DEFINITIONS	20
7.7 DIVIDENDS	20
7.8 FISCAL YEAR	21
7.9 SEAL	21
7.10 TRANSFER OF STOCK	21
7.11 STOCK TRANSFER AGREEMENTS	21
7.12 REGISTERED STOCKHOLDERS	21
7.13 WAIVER OF NOTICE	21
ARTICLE VIII NOTICE BY ELECTRONIC TRANSMISSION	22
8.1 NOTICE BY ELECTRONIC TRANSMISSION	22
8.2 DEFINITION OF ELECTRONIC TRANSMISSION	23
8.3 INAPPLICABILITY	23



**Table of Contents**

	<b>Page</b>
ARTICLE IX INDEMNIFICATION	23
9.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS	23
9.2 INDEMNIFICATION OF OTHERS	24
9.3 INSURANCE	24
9.4 EXPENSES	24
9.5 NON-EXCLUSIVITY OF RIGHTS	25
9.6 SURVIVAL OF RIGHTS	25
9.7 AMENDMENTS	25
ARTICLE X AMENDMENTS	25

---

-iii-

**Table of Contents**

**BYLAWS OF INTEVAC, INC.  
ARTICLE I CORPORATE OFFICES**

**1.1 REGISTERED OFFICE**

The registered office of Intevac, Inc. shall be fixed in the corporation's certificate of incorporation, as the same may be amended from time to time.

**1.2 OTHER OFFICES**

The corporation's board of directors (the **Board**) may at any time establish other offices at any place or places where the corporation is qualified to do business.

**ARTICLE II MEETINGS OF STOCKHOLDERS**

**2.1 PLACE OF MEETINGS**

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the **DGCL**). In the absence of any such designation or determination, stockholders meetings shall be held at the corporation's principal executive office.

**2.2 ANNUAL MEETING**

The annual meeting of stockholders shall be held each year on such date and at a time designated by the Board. At the annual meeting, directors shall be elected and any other proper business may be transacted.

**2.3 SPECIAL MEETING**

A special meeting of the stockholders may be called as set forth in this corporation's certificate of incorporation.

No business may be transacted at such special meeting other than the business specified in such notice to stockholders. Nothing contained in this paragraph of this Section 2.3 shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board may be held.



**Table of Contents**

**2.4 ADVANCE NOTICE PROCEDURES; NOTICE OF STOCKHOLDERS MEETINGS**

(i) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board, (B) otherwise properly brought before the meeting by or at the direction of the Board, or (C) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than one hundred twenty (120) calendar days before the one year anniversary of the date on which the corporation first mailed its proxy statement to stockholders in connection with the previous year's annual meeting of stockholders; *provided, however*, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date of the prior year's meeting, notice by the stockholder to be timely must be so received not later than the close of business on the later of one hundred twenty (120) calendar days in advance of such annual meeting and ten (10) calendar days following the date on which public announcement of the date of the meeting is first made. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting: (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (c) the class and number of shares of the corporation that are beneficially owned by the stockholder, (d) any material interest of the stockholder in such business, and (e) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the **1934 Act**), in the stockholder's capacity as a proponent to a stockholder proposal. Notwithstanding the foregoing, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholder's meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this paragraph (i). The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this paragraph (i), and, if the chairperson should so determine, he or she shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

(ii) Only persons who are nominated in accordance with the procedures set forth in this paragraph (ii) shall be eligible for election as directors. Nominations of persons for election to the Board of the corporation may be made at a meeting of stockholders by or at the direction of the Board or by any stockholder of the corporation entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in this paragraph (ii). Such nominations, other than those made by or at the direction of the Board, shall be made pursuant to timely notice in writing to the secretary of the corporation in accordance with the provisions of paragraph (i) of this Section 2.4. Such stockholder's notice shall set forth (a) as to each person, if any, whom the stockholder proposes to

**Table of Contents**

nominate for election or re-election as a director: (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) the class and number of shares of the corporation that are beneficially owned by such person, (D) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, and (E) any other information relating to such person that is required to be disclosed in solicitations of proxies for elections of directors, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and (b) as to such stockholder giving notice, the information required to be provided pursuant to paragraph (i) of this Section 2.4. At the request of the Board, any person nominated by a stockholder for election as a director shall furnish to the secretary of the corporation that information required to be set forth in the stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this paragraph (ii). The chairperson of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the meeting, and the defective nomination shall be disregarded.

These provisions shall not prevent the consideration and approval or disapproval at an annual meeting of reports of officers, directors and committees of the Board, but in connection therewith no new business shall be acted upon at any such meeting unless stated, filed and received as herein provided. Notwithstanding anything in these bylaws to the contrary, no business brought before a meeting by a stockholder shall be conducted at an annual meeting except in accordance with procedures set forth in this Section 2.4.

Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the written notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting.

**2.5 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE**

Notice of any meeting of stockholders shall be given:

- (i) if mailed, when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the corporation's records; or
- (ii) if electronically transmitted as provided in Section 8.1 of these bylaws.

**Table of Contents**

An affidavit of the secretary or an assistant secretary of the corporation or of the transfer agent or any other agent of the corporation that the notice has been given by mail or by a form of electronic transmission, as applicable, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

**2.6 QUORUM**

The holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

**2.7 ADJOURNED MEETING; NOTICE**

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place if any thereof, and the means of remote communications if any by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**2.8 CONDUCT OF BUSINESS**

The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business.

**2.9 VOTING**

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

**Table of Contents**

**2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING**

Any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of stockholders of the corporation and may not be effected by any consent in writing by such stockholders.

**2.11 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING CONSENTS**

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other such action.

If the Board does not so fix a record date:

(i) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(ii) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for the adjourned meeting.

**2.12 PROXIES**

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

**2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE**

The officer who has charge of the stock ledger of the corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of

**Table of Contents**

shares registered in the name of each stockholder. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the corporation's principal executive office. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

**2.14 INSPECTORS OF ELECTION**

A written proxy may be in the form of a telegram, cablegram, or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the person.

Before any meeting of stockholders, the Board shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The number of inspectors shall be either one (1) or three (3). If any person appointed as inspector fails to appear or fails or refuses to act, then the chairperson of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy.

Such inspectors shall:

- (i) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;
- (ii) receive votes, ballots or consents;
- (iii) hear and determine all challenges and questions in any way arising in connection with the right to vote;
- (iv) count and tabulate all votes or consents;
- (v) determine when the polls shall close;
- (vi) determine the result; and

**Table of Contents**

(vii) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

**ARTICLE III DIRECTORS**

**3.1 POWERS**

Subject to the provisions of the DGCL and any limitation in the certificate of incorporation and these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board.

Without prejudice to these general powers, and subject to the same limitations, the Board shall have the power to:

(i) Select and remove all officers, agents, and employees of the corporation; prescribe any powers and duties for them that are consistent with law, with the certificate of incorporation, and with these bylaws; fix their compensation; and require from them security for faithful service.

(ii) Change the principal executive office or the principal business office of the corporation from one location to another; cause the corporation to be qualified to do business in any state, territory, dependency, or country and conduct business within any such state, territory, dependency, or country; and designate any place within or outside the State of Delaware for the holding of any stockholders meeting, or meetings, including annual meetings.

(iii) Adopt, make, and use a corporate seal; prescribe the forms of certificates of stock; and alter the form of the seal and certificates.

(iv) Authorize the issuance of shares of stock of the corporation on any lawful terms, in consideration of money paid, labor done, services actually rendered, debts or securities cancelled, or tangible or intangible property actually received.

(v) Borrow money and incur indebtedness on behalf of the corporation, and cause to be executed and delivered for the corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities.

**Table of Contents**

**3.2 NUMBER OF DIRECTORS**

The Board shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

**3.3 ELECTION AND TERM OF OFFICE OF DIRECTORS**

Directors shall be elected at each annual meeting of the stockholders to hold office until the next annual meeting. Each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been qualified and elected or until such director's earlier death, resignation or removal.

**3.4 RESIGNATION AND VACANCIES**

Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. A resignation is effective when the resignation is delivered, unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the Board effective at a future date, a majority of the directors then in office, including those who are resigning, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to

**Table of Contents**

replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

**3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE**

The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

**3.6 REGULAR MEETINGS**

Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board.

**3.7 SPECIAL MEETINGS; NOTICE**

Special meetings of the Board for any purpose or purposes may be called at any time by the chairperson of the Board, the chief executive officer, the president, the secretary or a majority of the authorized number of directors.

Notice of the time and place of special meetings shall be:

- (i) delivered personally by hand, by courier or by telephone;
- (ii) sent by United States first-class mail, postage prepaid;
- (iii) sent by facsimile; or
- (iv) sent by electronic mail,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the corporation's principal executive office) nor the purpose of the meeting.



**Table of Contents**

**3.8 QUORUM; VOTING**

At all meetings of the Board, a majority of the authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

**3.9 WAIVER OF NOTICE**

Whenever notice is required to be given to a director under any provision of the DGCL or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the director, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a director at a meeting of the Board shall constitute a waiver of notice of such meeting, except when the director attends such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board, or of a committee of Board, need be specified in any written waiver of notice, unless so required by the certificate of incorporation or these bylaws.

**3.10 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING**

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**3.11 FEES AND COMPENSATION OF DIRECTORS**

Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board shall have the authority to fix the compensation of directors.

**3.12 REMOVAL OF DIRECTORS**

Any director may be removed from office by the stockholders of the corporation.

**Table of Contents**

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

**3.13 APPROVAL OF LOANS**

Subject to compliance with applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this section shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

**ARTICLE IV COMMITTEES**

**4.1 COMMITTEES OF DIRECTORS**

The Board may, by resolution passed by a majority of the authorized number of directors, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, (ii) adopt, amend or repeal any bylaw of the corporation, (iii) fill any vacancies on the Board or on any committee, (iv) fix the compensation of the directors for serving on the Board or any committee, or (v) authorize a distribution to the stockholders of the corporation, except at a rate or in a periodic amount or within a price range determined by the Board.

**4.2 COMMITTEE MINUTES**

Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

**Table of Contents**

**4.3 MEETINGS AND ACTION OF COMMITTEES**

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

- (i) Section 3.5 (place of meetings and meetings by telephone);
- (ii) Section 3.6 (regular meetings);
- (iii) Section 3.7 (special meetings; notice);
- (iv) Section 3.8 (quorum; voting);
- (v) Section 3.9 (waiver of notice); and
- (vi) Section 3.10 (board action by written consent without a meeting)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. *However:*

- (i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;
- (ii) special meetings of committees may also be called by resolution of the Board; and
- (iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

**ARTICLE V OFFICERS**

**5.1 OFFICERS**

The officers of the corporation shall be a president and a secretary. The corporation may also have, at the discretion of the Board, a chairperson of the Board, a vice chairperson of the Board, a chief executive officer, a chief financial officer or treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

**5.2 APPOINTMENT OF OFFICERS**

The Board shall appoint the officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 and 5.5 of these bylaws, subject to the rights, if any, of an officer under any contract of employment.

**Table of Contents**

**5.3 SUBORDINATE OFFICERS**

The Board may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

**5.4 REMOVAL AND RESIGNATION OF OFFICERS**

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board at any regular or special meeting of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

**5.5 VACANCIES IN OFFICES**

Any vacancy occurring in any office of the corporation shall be filled by the Board or as provided in Section 5.3.

**5.6 CHAIRMAN OF THE BOARD**

The chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board or as may be prescribed by these bylaws. If there is no president, then the chairman of the Board shall also be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 5.7 of these bylaws.

**5.7 CHIEF EXECUTIVE OFFICER**

Subject to such supervisory powers, if any, as may be given by the Board to the chairman of the Board, if there be such an officer, the chief executive officer of the corporation shall, subject to the control of the Board, have general supervision, direction and control of the business and the officers of the corporation. He or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the Board. He or she shall have the general powers and duties of management usually vested in the chief executive officer of a corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these bylaws.

**Table of Contents**

**5.8 PRESIDENT**

Subject to such supervisory powers, if any, as may be given by the Board to the chairman of the Board and chief executive officer, if there be such an officer, the president of the corporation shall, subject to the control of the Board, have general supervision over the operation of the corporation, including the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these bylaws. The offices of president and chief executive officer may be held by the same person.

**5.9 VICE PRESIDENT**

In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the Board or, if not ranked, a vice president designated by the Board, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board, these bylaws, the president or the chairman of the Board.

**5.10 SECRETARY**

The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the Board may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the Board, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board required to be given by law or by these bylaws. He shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board or by these bylaws.

**5.11 CHIEF FINANCIAL OFFICER**

The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained

**Table of Contents**

earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board. He shall disburse the funds of the corporation as may be ordered by the Board, shall render to the president and directors, whenever they request it, an account of all of his transactions as chief financial officer and of the financial condition of the corporation, and shall have other power and perform such other duties as may be prescribed by the Board or these bylaws.

**5.12 AUTHORITY AND DUTIES OF OFFICERS**

All officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the Board or the stockholders and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

**ARTICLE VI RECORDS AND REPORTS**

**6.1 MAINTENANCE AND INSPECTION OF RECORDS**

The corporation shall, either at its principal executive office or at such place or places as designated by the Board, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent so to act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal executive office.

**6.2 REPRESENTATION OF SHARES OF OTHER CORPORATIONS**

The chairperson of the Board, the president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the Board or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

**Table of Contents**

**ARTICLE VII GENERAL MATTERS**

**7.1 CHECKS, DRAFTS, EVIDENCES OF INDEBTEDNESS**

From time to time, the Board shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

**7.2 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS**

The Board, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**7.3 STOCK CERTIFICATES; PARTLY PAID SHARES**

The shares of the corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates, and upon request every holder of uncertificated shares, shall be entitled to have a certificate signed by, or in the name of the corporation by the chairperson or vice-chairperson of the Board, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

**Table of Contents**

**7.4 SPECIAL DESIGNATION ON CERTIFICATES**

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; *provided, however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

**7.5 LOST CERTIFICATES**

Except as provided in this Section 7.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

**7.6 CONSTRUCTION; DEFINITIONS**

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term **person** includes both a corporation and a natural person.

**7.7 DIVIDENDS**

The Board, subject to any restrictions contained in either (i) the DGCL, or (ii) the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock.

The Board may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.



**Table of Contents**

**7.8 FISCAL YEAR**

The fiscal year of the corporation shall be fixed by resolution of the Board and may be changed by the Board.

**7.9 SEAL**

The corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

**7.10 TRANSFER OF STOCK**

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

**7.11 STOCK TRANSFER AGREEMENTS**

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

**7.12 REGISTERED STOCKHOLDERS**

The corporation:

- (i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;
- (ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and
- (iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

**7.13 WAIVER OF NOTICE**

Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting

**Table of Contents**

shall constitute a waiver of notice of such meeting, except when the person attends such meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission, unless so required by the certificate of incorporation or these bylaws.

**ARTICLE VIII NOTICE BY ELECTRONIC TRANSMISSION**

**8.1 NOTICE BY ELECTRONIC TRANSMISSION**

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the corporation under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if:

- (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and
- (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

- (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;
- (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;
- (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and
- (iv) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

**Table of Contents**

**8.2 DEFINITION OF ELECTRONIC TRANSMISSION**

An **electronic transmission** means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

**8.3 INAPPLICABILITY**

Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

**ARTICLE IX INDEMNIFICATION**

**9.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS**

The corporation shall, to the maximum extent and in the manner permitted by the DGCL as the same now exists or may hereafter be amended, indemnify any person against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit, or proceeding in which such person was or is a party or is threatened to be made a party by reason of the fact that such person is or was a director or officer of the corporation; provided, however, that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers and, provided further, that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized in advance by the Board, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or (iv) such indemnification is required to be made pursuant to an individual contract. For purposes of this Section 9.1, a director or officer of the corporation shall mean any person (a) who is or was a director or officer of the corporation, (b) who is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was a director or officer of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

The corporation shall pay the expenses (including attorney's fees) incurred by a director or officer of the corporation entitled to indemnification hereunder in defending any action, suit or proceeding referred to in this Section 9.1 in advance of its final disposition; provided, however, that payment of expenses incurred by a director or officer of the corporation in advance of the final disposition of such action, suit or proceeding shall be made only upon receipt of an undertaking by the director or officer to repay all amounts advanced if it should ultimately be determined that the director or officer is not entitled to be indemnified under this Section 9.1 or otherwise.

The rights conferred on any person by this Article shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the corporation's

**Table of Contents**

certificate of incorporation, these bylaws, agreement, vote of the stockholders or disinterested directors or otherwise.

Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

**9.2 INDEMNIFICATION OF OTHERS**

The corporation shall have the power, to the maximum extent and in the manner permitted by the DGCL as the same now exists or may hereafter be amended, to indemnify any person other than a director or officer (as such terms are defined in Section 9.1 above) against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit, or proceeding, in which such person was or is a party or is threatened to be made a party by reason of the fact that such person is or was an employee or agent of the corporation. For purposes of this Section 9.2, an employee or agent of the corporation (other than a director or officer, as such terms are defined in Section 9.1 above) shall mean any person (i) who is or was an employee or agent of the corporation, (ii) who is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

**9.3 INSURANCE**

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of the DGCL.

**9.4 EXPENSES**

The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any such director or officer in connection with such proceeding, upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this bylaw or otherwise; provided, however, that the corporation shall not be required to advance expenses to any such director or officer in connection with any proceeding (or part thereof) initiated by such person unless the proceeding was authorized in advance by the Board.

**Table of Contents**

Notwithstanding the foregoing, unless otherwise determined pursuant to Section 9.5, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

**9.5 NON-EXCLUSIVITY OF RIGHTS**

The rights conferred on any person by this bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL.

**9.6 SURVIVAL OF RIGHTS**

The rights conferred on any person by this bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

**9.7 AMENDMENTS**

Any repeal or modification of this bylaw shall only be prospective and shall not affect the rights under this bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

**ARTICLE X AMENDMENTS**

These bylaws may be adopted, amended or repealed by the stockholders of the corporation. However, the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal these bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power, to adopt, amend or repeal these bylaws as set forth above.

**Table of Contents**

**PROXY  
THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS OF  
INTEVAC, INC.**

Kevin Fairbairn and Charles B. Eddy III, or either of them, are hereby appointed as the lawful agents and proxies of the undersigned (with all powers the undersigned would possess if personally present, including full power of substitution) to represent and to vote all shares of capital stock of Intevac, Inc. which the undersigned is entitled to vote at our Annual Meeting of Shareholders on May 15, 2007, and at any adjournments or postponements thereof, as follows on the reverse side.

**CONTINUED AND TO BE SIGNED ON REVERSE SIDE**

---

**Table of Contents**

**The Board of Directors recommends a vote FOR each of the proposals below. This Proxy will be voted as directed, or, if no direction is indicated, will be voted FOR each of the proposals below and at the discretion of the persons named as proxies upon such other matters as may properly come before the meeting. This proxy may be revoked at any time before it is voted.**

1. The election of all nominees listed below for the Board of Directors, as described in the Proxy Statement:

**Nominees:** Norman H. Pond, Kevin Fairbairn, David S. Dury, Stanley J. Hill, Robert Lemos, and Ping Yang  
**FOR**  **WITHHELD**

(INSTRUCTION: To withhold authority to vote for any individual nominee, write such name or names in the space provided below.)

2. Proposal to approve the reincorporation of the Company from California to Delaware by means of a merger with and into a wholly owned Delaware subsidiary:

**FOR**  **AGAINST**  **ABSTAIN**

3. Proposal to approve an amendment to increase the maximum number of shares of Common Stock authorized for issuance under the Company's 2004 Equity Incentive Plan by 900,000 shares:

**FOR**  **AGAINST**  **ABSTAIN**

4. Proposal to ratify the appointment of Grant Thornton LLP as independent public accountants of Intevac for the fiscal year ending December 31, 2007:

**FOR**  **AGAINST**  **ABSTAIN**

5. Transaction of any other business which may properly come before the meeting and any adjournment or postponement thereof.

DATE: \_\_\_\_\_, 2007

(Signature)

(Signature if held jointly)

(Please sign exactly as shown on your stock certificate and on the envelope in which this proxy was mailed. When signing as partner, corporate officer, attorney, executor, administrator, trustee, guardian or in any other representative capacity, give full title as such and sign your own name as well. If stock is held jointly, each joint owner should sign.)

**PLEASE MARK, SIGN, DATE AND RETURN THIS PROXY CARD PROMPTLY,  
USING THE ENCLOSED ENVELOPE.**