

MEDISTEM LABORATORIES, INC.  
Form 10QSB/A  
January 19, 2006

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 10-QSB/A**

**(Amendment No. 1)**

(Mark One)

**QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

For the quarterly period ended: September 30, 2005

**Or**

**TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 333-100137

**MEDISTEM LABORATORIES, INC.**

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(Exact name of small business issuer as specified in its charter)

Nevada  
(State or other jurisdiction of incorporation  
or organization)

86-1047317  
(I.R.S. Employer Identification No.)

2027 E. Cedar St.

Tempe, AZ  
(Address of principal executive offices)

85281  
(Zip Code)

(954) 727-3662  
(Issuer's telephone number)

SGC Holdings, Inc.

15911 E. Sunburst Dr.

Fountain Hills, AZ 85268  
(Former name, former address and former fiscal year, if changed since last report)

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Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

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

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**APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE PRECEDING FIVE YEARS:**

Check whether the registrant filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Exchange Act after the distribution of securities under a plan confirmed by a court.

Yes  No

**APPLICABLE ONLY TO CORPORATE ISSUERS:**

State the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: 81,600,000

Transitional Small Business Disclosure Format (Check one): Yes  No

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**Explanatory Note**

We are filing this Amendment No. 1 to our Quarterly Report on Form 10-QSB for the quarterly period ended September 30, 2005 for the purpose of conforming the Form 10-QSB to the SEC's current Form, to make certain nonmaterial changes to the disclosure, to file Exhibit 10.1 and refile Exhibit 31.

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**MEDISTEM LABORATORIES, INC.**

**(Formerly SGC Holdings, Inc. and Subsidiary)**

**(A Development Stage Company)**

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**PART I FINANCIAL INFORMATION**

**Unaudited Financial Statements**

**Item 1. Financial Statements.**

1

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**Medistem Laboratories, Inc.**

**Formerly SGC Holdings, Inc. and Subsidiary)**

(a Development Stage Company)

**Consolidated Balance Sheet**

**(unaudited)**

	September 30, 2005
<hr/>	
<b>Assets</b>	
Current assets:	
Cash	\$
Total current assets	\$
 <b>Liabilities and Stockholders Equity</b>	
Current liabilities:	\$ <hr style="display: inline-block; width: 100px; vertical-align: middle;"/>
 Stockholders' equity:	
Common stock, \$0.001 par value, 100,000,00 shares authorized, 81,600,000 shares issued and outstanding	8,160
Additional paid-in capital	30,440
(Deficit) accumulated during development stage	(38,600 )
	<hr style="display: inline-block; width: 100px; vertical-align: middle;"/>
	<hr style="display: inline-block; width: 100px; vertical-align: middle;"/>
	\$

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



**Medistem Laboratories, Inc.**

**(Formerly SGC Holdings, Inc. and Subsidiary)**

(a Development Stage Company)

**Consolidated Statements of Operations**

**(unaudited)**

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>		<b>December 5, 2001 (Inception) to September 30, 2005</b>
	<b>2005</b>	<b>2004</b>	<b>2005</b>	<b>2004</b>	
<b>Revenue</b>	\$	\$	\$3,060	\$	\$3,060
<b>Operating expenses:</b>					
General and administrative expenses	714	2,898	4,311	9,942	40,013
General and administrative expenses related party					1,500



- (f) The Goldman Sachs Group, Inc. is the beneficial owner of Goldman Sachs Credit Partners L.P. (“Goldman Sachs”), and the voting and dispositive power is exercised by its management committee and their delegates. Goldman Sachs is not a registered broker-dealer; however, it is an affiliate of a registered broker-dealer due solely to its being under common control with a registered broker-dealer. The broker-dealer that is an affiliate of Goldman Sachs was not involved in the purchase of the shares, and will not be involved in the sale of the shares. Goldman Sachs purchased the shares in the ordinary course of its business and is not a party to any agreement or other understanding, directly or indirectly, with any person to distribute the shares.
- (g) Includes 94,757 shares of Class A Common Stock subject to currently exercisable warrants. Mikhail Filimonov, as Chief Executive Officer of Alexandra Investment Management, LLC, Agent for Alexandra Global Master Fund Ltd., exercises the voting and dispositive power.
- (h) Jon D. Gruber and J. Patterson McBaine, as Managing Members of Gruber & McBaine Capital Management, may each be deemed the beneficial owner of, and exercise voting and/or dispositive power over, the securities to be sold by Lagunitas Partners and Gruber & McBaine International, including, (i) 17,763 shares of Class A Common Stock subject to currently exercisable warrants owned by Lagunitas Partners LP and (ii) 3,289 shares of Class A Common Stock subject to currently exercisable warrants owned by Gruber and McBaine International. Jon D. Gruber, as Trustee for the Jon D. & Linda W. Gruber Trust, may be deemed the beneficial owner of, and exercises voting and/or dispositive power over, the securities to be sold by the Jon D & Linda W Gruber Trust, including, 3,552 shares of Class A Common Stock subject to currently exercisable warrants owned by the Jon D. & Linda W. Gruber Trust.
- (i) Includes (i) shares of Class A Common Stock owned, or subject to currently exercisable warrants owned, by Lagunitas Partners LP, (ii) shares of Class A Common Stock owned, or subject to currently exercisable warrants owned, by Gruber & McBaine International and (iii) shares of Class A Common Stock, including 1,578 shares of Class A Common Stock subject to currently exercisable warrants, owned by Donaghy Sales Inc., all of which may be deemed to be beneficially owned by J. Patterson McBaine.



- (j) Aristeia Capital LLC is the investment manager for Aristeia International Limited. Aristeia Capital LLC is jointly owned by Kevin C. Toner, Robert H. Lynch Jr., Anthony M. Frascella and William R. Techar and consequently may be deemed to have voting and/or dispositive power with respect to the securities held by this selling securityholder.
- (k) Aristeia Advisors LLC is the general partner of Aristeia Partners LP. Aristeia Advisors LLC is jointly owned by Kevin C. Toner, Robert H. Lynch Jr., Anthony M. Frascella and William R. Techar and consequently may be deemed to have voting and/or dispositive power with respect to the securities held by this selling securityholder.
- (l) Aristeia Capital LLC is the investment manager for Aristeia Special Investments Master, L.P. Aristeia Capital LLC is jointly owned by Kevin C. Toner, Robert H. Lynch Jr., Anthony M. Frascella and William R. Techar and consequently may be deemed to have voting and/or dispositive power with respect to the securities held by this selling securityholder.
- (m) Mitch Levine, the Managing Member and Chief Executive Officer, and Brendan O'Neil, the President and Chief Investment Officer, of Enable Capital Management, LLC, the manager of Enable Growth Partners, LP, Enable Opportunity Partners LP, and Pierce Diversified Strategy Master Fund LLC, Ena, share the discretionary authority to vote and dispose of the shares held by the aforementioned holders. Each of the aforementioned selling stockholders has advised us that it purchased the securities reflected in this table as being owned by it and offered for sale in the ordinary course of business and, at the time of purchase, it had no agreements or understandings, directly or indirectly, with any person to distribute those securities.

No selling stockholder has held a position as a director or officer nor has had a material relationship with us or any of our affiliates, or our or their predecessors, within the past three years.

On August 24, 2007, the Company entered into a securities purchase agreement with the purchasers party thereto pursuant to which the Company agreed to issue the 2007 Senior Notes in the aggregate principal amount of \$55.0 million. Such purchasers consist of the selling stockholders listed in this prospectus. The 2007 Senior Notes were issued on August 27, 2007 and have a term of three years which may be extended for up to one 6 month period at the discretion of the Company if certain conditions are met, or prepaid in whole or in part following the first anniversary of the issuance of the Notes, subject to certain conditions and penalties. Interest on the Notes is due quarterly and may be paid in cash or, at the Company's option and subject to certain conditions, in shares of its Class A Common Stock. Interest payments were made in shares of Class A Common Stock for the quarters ended December 31, 2007, March 31, 2008 and June 30, 2008, and in cash for the quarters ended September 20, 2008, December 31, 2008 and March 31, 2009.

The Notes also required that the Company issue to the purchasers 715,000 shares of Class A Common Stock of the Company, paid as an equity kicker for the first year. Pursuant to the Notes, the Company issued and will issue in arrears at the end of each quarterly period beginning December 31, 2008, additional shares at a rate of between 2.4 and 4 shares per \$1,000 principal value of the 2007 Senior Notes, such number of shares to be dependent on the current price of the Class A Common Stock during a measurement period immediately prior to such payment. Subsequent additional share payments will be made quarterly .

In connection with the 2007 Senior Notes, the Company agreed to register the resale of the shares of Class A Common Stock issued as additional shares and as payment of interest, resulting in the offering under this prospectus.

#### PLAN OF DISTRIBUTION

Each Selling Stockholder of the Common Stock of the Company and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their shares of Common Stock on the Trading Market or any other stock exchange, market or trading facility on which the shares are traded or in private transactions. If the

shares of Common Stock are sold through underwriters or broker-dealers, the Selling Stockholders will be responsible for underwriting discounts or commissions or agent's commissions. These sales may be at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of the sale or at negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling shares:

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;

- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales entered into after the effective date of the registration statement of which this prospectus is a part;
- broker-dealers may agree with the Selling Stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell shares under Rule 144 under the Securities Act of 1933, as amended (the “Securities Act”), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of shares, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with NASD Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with NASD IM-2440.

In connection with the sale of the Common Stock or interests therein, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the Common Stock in the course of hedging the positions they assume. The Selling Stockholders may also sell shares of the Common Stock short and deliver these securities to close out their short positions, or loan or pledge the Common Stock to broker-dealers that in turn may sell these securities. The Selling Stockholders may also loan or pledge shares of Common Stock to broker-dealers that in turn may sell such shares. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholders and any broker-dealers or agents that are involved in selling the shares may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the Common Stock. In no event shall any broker-dealer receive fees, commissions and markups which, in the aggregate, would exceed eight percent (8%).

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the shares. The Company has agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

The Selling Stockholders will be subject to the prospectus delivery requirements of the Securities Act or an exemption therefrom. In addition, any securities covered by this prospectus which qualify for sale pursuant to Rule 144 under the Securities Act may be sold under Rule 144 rather than under this prospectus. There is no underwriter or coordinating broker acting in connection with the proposed sale of the resale shares by the Selling Stockholders.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the shares may be resold by the Selling Stockholders without registration and without regard to any volume limitations by reason of Rule 144(e) under the Securities Act or any other rule of similar effect or (ii) all of the shares have been sold pursuant to the prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale shares will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale shares may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale shares may not simultaneously engage in market making activities with respect to the Common Stock for a period of two business days prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of shares of the Common Stock by the Selling Stockholders or any other person. At the time a particular offering of the shares of Common Stock is made, a prospectus supplement, if required as determined by the Company in its sole discretion, will be distributed which will set forth the aggregate amount of shares of Common Stock being offered and the terms

of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the Selling Stockholders and any discounts, commissions or concessions allowed or reallocated or paid to broker-dealers. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale unless exempted from the prospectus delivery requirement.

The Selling Stockholders may pledge or grant a security interest in some or all of the convertible notes, warrants or shares of Common Stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of Common Stock from time to time pursuant to this prospectus or any amendment or supplement to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act, amending, if necessary, the list of Selling Stockholders to include the pledgee, transferee or other successors in interest as Selling Stockholders under this prospectus. The Selling Stockholders also may transfer and donate the shares of Common Stock in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

There can be no assurance that any Selling Stockholder will sell any or all of the shares of Common Stock registered pursuant to the registration statement, of which this prospectus forms a part.

Once sold under the registration statement, of which this prospectus forms a part, the shares of Common Stock will be freely tradable in the hands of persons other than our affiliates.

We will not receive any of the proceeds from the sale by the Selling Stockholders of the shares of Common Stock. We will pay all expenses of the registration of the shares of Common Stock pursuant to the registration rights agreement, including, without limitation, Securities and Exchange Commission filing fees and expenses of compliance with state securities or "blue sky" laws; provided, however, that a Selling Stockholder will pay all underwriting discounts and selling commissions, if any.

#### LEGAL MATTERS

The validity of the offered shares of the Common Stock has been passed on for us by Kelley Drye & Warren LLP, New York, New York.

#### EXPERTS

The consolidated financial statements incorporated by reference from the Company's Annual Report on Form 10-K/A (Amendment No. 2) for the fiscal year ended March 31, 2008, and the effectiveness of internal control over financial reporting have been audited by Eisner LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference. Such financial statements and management's assessment of the effectiveness of internal control over financial reporting as of March 31, 2008 have been so incorporated by reference in reliance on the reports of such firm given their authority as experts in accounting and auditing.

#### INDEMNIFICATION AGAINST LIABILITY UNDER THE SECURITIES ACT

We are permitted to indemnify to the fullest extent now or hereafter permitted by law, each director, officer or other authorized representative of the Company who was or is made 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 is or was an authorized representative of the Company, against all expenses (including attorneys' fees and disbursements), judgments, fines (including excise taxes and penalties) and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding.

A director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however that this provision shall not eliminate or limit the liability of a director to the extent that such elimination or liability is expressly prohibited by the Delaware General Corporation Law as in effect at the time of the alleged breach of duty by such director.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to any arrangement, provision or otherwise, we have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by us of expenses incurred or paid by any of our directors, officers or controlling persons in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such



indemnification by us is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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1,320,000 Shares

Class A Common Stock

PROSPECTUS

\_\_\_\_\_, 2009

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table presents the costs and expenses, payable by us in connection with the sale of securities being registered under this registration statement. All amounts are estimates except for the SEC registration fee.

SEC registration fee	\$ 104
Legal fees and expenses	\$ 10,000
Accounting fees and expenses	\$ 8,000
Miscellaneous fees and expenses	\$ 896
Total:	\$ 19,000

Item 15. Indemnification of Directors and Officers.

We are permitted to indemnify to the fullest extent now or hereafter permitted by law, each director, officer or other authorized representative of the Company who was or is made 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 is or was an authorized representative of the Company, against all expenses (including attorneys' fees and disbursements), judgments, fines (including excise taxes and penalties) and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding.

A director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however that this provision shall not eliminate or limit the liability of a director to the extent that such elimination or limitation of liability is expressly prohibited by the Delaware General Corporation Law ("DGCL") as in effect at the time of the alleged breach of duty by such director.

The amended and restated certificate of incorporation and the bylaws of the registrant provide that the registrant shall indemnify its officers, directors and certain others to the fullest extent permitted by the DGCL. Section 145 of the DGCL, provides in pertinent part as follows:

(a) A corporation may indemnify 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 (other than an action by or in the right of the corporation) by reason of the fact that he 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 expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he 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 expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this Section, or in defense

of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) of this Section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b) of this Section. Such determination shall be made with respect to a person who is a director or officer at the time of such determination (1) by a majority vote of directors who are not parties to such action, suit or proceeding, even though less than a quorum, (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (4) by the stockholders.

(e) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, 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 such office.

(g) A corporation shall have power to 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 and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under this Section.

(h) For purposes of this Section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this Section, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation, which imposes duties on, or involves services by, such director, officer, employee, or agent of the corporation, which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Section.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

As permitted by Section 102(b)(7) of the DGCL, the registrant's fourth amended and restated certificate of incorporation eliminates the personal liability of each of the registrant's directors to the registrant and its stockholders for monetary damages for breaches of his or her fiduciary duties as a director except that the fourth amended and restated certificate of incorporation does not eliminate or limit the liability of a director to the extent that such elimination or limitation of liability is expressly prohibited by the DGCL as in effect at the time of the alleged breach of duty by such director.

#### Item 16. Exhibits

The exhibits listed in the following table have been filed as part of this registration statement.

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Exhibit Number	Description of Document
2.1	-- Securities Purchase Agreement, dated August 24, 2007, by and among the Company and certain purchasers (previously filed with the Securities and Exchange Commission on August 29, 2007 as an exhibit to the Company's Form 8-K (File No. 000-51910)) (confidential treatment granted under Rule 24b-2 as to certain portions which are omitted and filed separately with the SEC).
4.1	-- Form of Note to be issued to purchasers pursuant to the Securities Purchase Agreement, dated August 24, 2007, by and among the Company and certain purchasers (previously filed with the Securities and Exchange Commission on August 29, 2007 as an exhibit to the Company's Form 8-K (File No. 000-51910)) (confidential treatment granted under Rule 24b-2 as to certain portions which are omitted and filed separately with the SEC).
4.2	-- Registration Rights Agreement, dated August 24, 2007, by and among the Company and certain purchasers (previously filed with the Securities and Exchange Commission on August 29, 2007 as an exhibit to the Company's Form 8-K (File No. 000-51910)).
5.1	-- Opinion of Kelley Drye & Warren LLP.*
5.2	-- Opinion of Kelley Drye & Warren LLP.
10.1	-- Subsidiary Guaranty in favor of the holders of certain notes, dated August 24, 2007, by Access Digital Media, Inc., Core Technology Services, Inc., Hollywood Software, Inc., FiberSat Global Services Inc., PLX Acquisition Corp. and Vistachiarra Productions, Inc. (previously filed with the Securities and Exchange Commission on August 29, 2007 as an exhibit to the Company's Form 8-K (File No. 000-51910)).
10.2	-- Redemption Agreement, dated August 24, 2007, by and among the Company and certain of the holders of the Company's One Year Notes (previously filed with the Securities and Exchange Commission on August 29, 2007 as an exhibit to the Company's Form 8-K (File No. 000-51910)).
23.1	-- Consent of Kelley Drye & Warren LLP (included in Exhibit 5.2).
23.2	-- Consent of Eisner LLP.
24.1	-- Powers of Attorney (included on signature page).*

\*Previously filed.

## Item 17. Undertakings

Undertakings Required by Regulation S-K, Item 512(a).

The undersigned registrant hereby undertakes:

(1) To file, during any period in which it offers or sells securities, a post-effective amendment to this Registration Statement to:

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

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

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

provided, however, that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the registrant pursuant to



Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
  - (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
  - (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contact of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

Undertakings Required by Regulation S-K, Item 512(b).

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

Undertaking Required by Regulation S-K, Item 512(h).

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to any arrangement, provision or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the

Securities Act of 1933 and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Morristown, state of New Jersey, on April 3, 2009.

ACCESS INTEGRATED TECHNOLOGIES, INC.

By: /s/ A. Dale Mayo  
A. Dale Mayo  
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature(s)	Title(s)	Date
/s/ A. Dale Mayo A. Dale Mayo	President, Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer)	April 3, 2009
/s/ Gary S. Loffredo Gary S. Loffredo	Senior Vice President — Business Affairs, General Counsel, Secretary and Director	April 3, 2009
/s/ Brian D. Pflug Brian D. Pflug	Senior Vice President — Accounting and Finance (Principal Financial Officer and Principal Accounting Officer)	April 3, 2009
* Wayne L. Clevenger	Director	April 3, 2009
* Gerald C. Crotty	Director	April 3, 2009
Robert Davidoff	Director	
* Matthew W. Finlay	Director	April 3, 2009
* Robert E. Mulholland	Director	April 3, 2009
Adam Mizel	Director	

\*By: /s/ Gary S. Loffredo  
Gary S. Loffredo  
Attorney-in-Fact

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INDEX TO EXHIBITS

Exhibit Number	Description of Document
2.1	-- Securities Purchase Agreement, dated August 24, 2007, by and among the Company and certain purchasers (previously filed with the Securities and Exchange Commission on August 29, 2007 as an exhibit to the Company's Form 8-K (File No. 000-51910)) (confidential treatment granted under Rule 24b-2 as to certain portions which are omitted and filed separately with the SEC).
4.1	-- Form of Note to be issued to purchasers pursuant to the Securities Purchase Agreement, dated August 24, 2007, by and among the Company and certain purchasers (previously filed with the Securities and Exchange Commission on August 29, 2007 as an exhibit to the Company's Form 8-K (File No. 000-51910)) (confidential treatment granted under Rule 24b-2 as to certain portions which are omitted and filed separately with the SEC).
4.2	-- Registration Rights Agreement, dated August 24, 2007, by and among the Company and certain purchasers (previously filed with the Securities and Exchange Commission on August 29, 2007 as an exhibit to the Company's Form 8-K (File No. 000-51910)).
5.1	-- Opinion of Kelley Drye & Warren LLP.*
5.2	-- Opinion of Kelley Drye & Warren LLP.
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