

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) April 1, 2005

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GIBALTAR INDUSTRIES, INC.

-----  
(Exact name of registrant as specified in its chapter)

Delaware	0-22462	16-1445150
-----	-----	-----
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

3556 Lake Shore Road  
P.O. Box 2028  
Buffalo, New York 14219-0228  
-----  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (716) 826-6500  
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(Formerly Gibraltar Steel Corporation)

ITEM 1.01 Entry into a Material Definitive Agreement.

On April 1, 2005 Gibraltar Industries, Inc. and its wholly owned subsidiary, Gibraltar Steel Corporation of New York, as co-borrowers, entered into a Credit Agreement with KeyBank National Association; Manufacturers and Traders Trust Company; Harris Trust & Savings Bank; HSBC Bank USA, National Association; JPMorgan Chase Bank, N.A.; US Bank, National Association; Bank Of America; National City Bank of Pennsylvania; and Comerica Bank.

The Credit Agreement establishes a revolving line of credit, and provides for the issuance of letters of credit and swingline loans. The total borrowing availability under the Credit Agreement shall not exceed \$250,000,000 in the aggregate, *provided, however*, the borrowing capacity under the Credit Agreement may be increased by up to \$50,000,000 to \$300,000,000 at the borrowers' option, provided no event of default is in existence. Loans under the Credit Agreement bear interest, at the borrowers' option, at (i) various rates above the London InterBank Offered Rate (LIBOR) or (ii) at the higher of KeyBank's prime rate or the Federal funds effective rate.

The credit facility is secured by substantially all of the Registrant's accounts receivable, inventory, equipment and fixtures and other personal property, now owned or hereafter acquired. The credit facility contains covenants restricting the Registrant's ability to incur additional secured indebtedness; sell a substantial portion of its assets; merge or make acquisitions if it would result in post-closing liquidity being less than \$25,000,000 or cause an event of default; or to make investments in any joint ventures in excess of \$15,000,000 in the aggregate in any fiscal year. The Credit Agreement also obligates the Registrant to meet certain financial requirements and contains certain restrictions on the Registrant's ability to pay dividends.

Robert E. Sadler, Jr., a director of the Registrant, is the Chairman of the Board of Manufacturers and Traders Trust Company, one of the lenders under the Credit Agreement.

On April 1, 2005 the Registrant also amended and restated (i) the Senior Secured Note Purchase Agreement among the Registrant, Gibraltar Steel Corporation of New York and The Prudential Insurance Company of America dated as of July 3, 2002 (ii) the Subordinated Note Purchase Agreement among the Registrant, Gibraltar Steel Corporation of New York and The Prudential Insurance Company of America, dated as of July 3, 2002; and (iii) the Senior Secured Note Purchase Agreement among the Registrant, Gibraltar Steel Corporation of New York, and Prudential Life Insurance Company of America and Pruco Life Insurance Company dated June 18, 2004.

The Amendments and Restatements amended the covenants in the various note purchase agreements to make them consistent with the covenants in the Credit Agreement entered into with KeyBank and the other lenders described above.

Item 1.02 Termination of a Material Definitive Agreement

The Registrant terminated its existing credit facility with JPMorgan Chase Bank, as Administrative Agent, and various financial institutions set forth in the Fourth Amended and Restated Credit Agreement dated as of June 28, 2004 among the Registrant, Gibraltar Steel Corporation of New York and JPMorgan Chase Bank and the lenders listed therein. The agreement was terminated because of the Registrant's entry into the Credit Agreement with KeyBank and the other lenders, as described above in Item 1.01.

Item 9.01 Financial Statements and Exhibits

(c) Exhibits.

10.1 Credit Agreement among Gibraltar Industries, Inc., Gibraltar Steel Corporation of New York and KeyBank National Association and the other lenders named therein, dated as of April 1, 2005

10.2 Amended and Restated Note Purchase Agreement among Gibraltar Industries, Inc., Gibraltar Steel Corporation of New York and the Prudential Insurance Company of America dated as of April 1, 2005

10.3 Amended and Restated Subordinated Note Purchase Agreement among Gibraltar Industries, Inc., Gibraltar Steel Corporation of New York and the Prudential Insurance Company of America dated as of April 1, 2005

10.4 Amended and Restated Note Purchase Agreement among Gibraltar Industries, Inc., Gibraltar Steel Corporation of New York and the Prudential Insurance Company of America and Pruco Life Insurance Company dated as of April 1, 2005

#### SIGNATURES

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

Dated: April , 2005      GIBRALTAR INDUSTRIES, INC.

/S/ David W. Kay  
Name: David W. Kay  
Title: Chief Financial Officer

#### EXHIBIT INDEX

10.1 Credit Agreement among Gibraltar Industries, Inc., Gibraltar Steel Corporation of New York and KeyBank National Association and the other lenders named therein, dated as of April 1, 2005

10.2 Amended and Restated Note Purchase Agreement among Gibraltar Industries, Inc., Gibraltar Steel Corporation of New York and the Prudential Insurance Company of America dated as of April 1, 2005

10.3 Amended and Restated Subordinated Note Purchase Agreement among Gibraltar Industries, Inc., Gibraltar Steel Corporation of New York and the Prudential Insurance Company of America dated as of April 1, 2005

10.4 Amended and Restated Note Purchase Agreement among Gibraltar Industries, Inc., Gibraltar Steel Corporation of New York and the Prudential Insurance Company of America and Pruco Life Insurance Company

CREDIT AGREEMENT

among

GIBRALTAR INDUSTRIES, INC.,

GIBRALTAR STEEL CORPORATION OF NEW YORK,

KEYBANK NATIONAL ASSOCIATION

as Administrative Agent, Swingline Lender, Letter of Credit Issuer, Lead Arranger and Book Runner,

JPMORGAN CHASE BANK, N.A.

as Syndication Agent and Letter of Credit Issuer

HARRIS TRUST AND SAVINGS BANK

as Co-Documentation Agent,

HSBC BANK USA, NATIONAL ASSOCIATION

as Co-Documentation Agent,

MANUFACTURERS AND TRADERS TRUST COMPANY

as Co-Documentation Agent,

and

THE LENDERS NAMED HEREIN

\$250,000,000

& nbsp;

Dated: As of April 1,

2005

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THIS CREDIT AGREEMENT, dated as of April 1, 2005, among the following:

- (i) GIBRALTAR INDUSTRIES, INC., a Delaware corporation and GIBRALTAR STEEL CORPORATION OF NEW YORK, a New York Corporation (each a "Borrower" and collectively, the "Borrowers");
- (ii) the lending institutions from time to time party hereto (each a "Lender" and collectively, the "Lenders");
- (iii) KEYBANK NATIONAL ASSOCIATION, a national banking association, as a Lender, a Letter of Credit Issuer, and the lead arranger and administrative agent (the "Administrative Agent");
- (iv) JPMORGAN CHASE BANK, N.A., a national banking association, as a Lender, Letter of Credit Issuer and Syndication Agent (the "Syndication Agent");
- (v) HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation, and HSBC BANK USA, NATIONAL ASSOCIATION, a national banking association, MANUFACTURERS AND TRADERS TRUST COMPANY, a New York State banking corporation, each as a Lender and co-documentation agent (each a "Co-Documentation Agent" and collectively, the "Co-Documentation Agents");

PRELIMINARY STATEMENTS:

- (1) The Borrowers have applied to the Lenders for credit facilities in order to (a) refinance existing senior debt facilities, (b) provide working capital and funds for general corporate and other lawful purposes, and (c) provide funds for acquisitions of select stock and assets.
- (2) Subject to and upon the terms and conditions set forth herein, the Lenders are willing to make available to the Borrowers the credit facility provided for herein.

NOW, THEREFORE, it is agreed:

ARTICLE I  
DEFINITIONS AND TERMS

1.1 Certain Defined Terms. As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires:

"Acquisition" shall mean and include (whether in one transaction or a series of transactions) (i) any acquisition on a going concern basis (whether by purchase, lease or otherwise) of any facility and/or business or business unit operated by any person that is not a Subsidiary of a Borrower, and (ii) acquisitions of a majority of the outstanding equity or other similar interests in any such person (whether by merger, stock purchase or otherwise).

"Additional Security Document" shall have the meaning provided in Section 8.11(a).

"Adjusted Eurodollar Rate" shall mean, with respect to each Interest Period for a Eurodollar Loan, (i) the rate per annum appearing on the applicable electronic page of Reuter's or Bloomberg's (or any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided by such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market), at approximately 11:00 a.m. (London

time) two Business Days prior to the commencement of such Interest Period, as the rate for Dollar deposits with a maturity comparable to such Interest Period, divided (and rounded to the nearest one hundredth of 1%) by (ii) a percentage equal to 100% minus the then stated maximum rate of all reserve requirements (including, without limitation, any marginal, emergency, supplemental, special or other reserves and without benefit of credits for proration, exceptions or offsets that may be available from time to time) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D); provided, however, that in the event that the rate referred to in clause (i) above is not available at any such time for any reason, then the rate referred to in clause (i) shall instead be the average (rounded to the nearest ten thousandth of 1%) of the rates at which Dollar deposits of \$5,000,000 are offered to the Reference Banks in the London interbank market at approximately 11:00 a.m. (London time), two Business Days prior to the commencement of such Interest Period, for contracts that would be entered into at the commencement of such Interest Period.

"Administrative Agent" shall have the meaning provided in the first paragraph of this Agreement and shall include any successor to the Administrative Agent appointed pursuant to Section 11.9.

"Affiliate" shall mean, with respect to any person, any other person directly or indirectly controlling, controlled by, or under direct or indirect common control with such person, or, in the case of any Lender that is an investment fund, the investment advisor thereof and any investment fund having the same investment advisor. A person shall be deemed to control a second person if such first person possesses, directly or indirectly, the power (i) to vote 10% or more of the securities having ordinary voting power for the election of directors or managers of such second person or (ii) to direct or cause the direction of the management and policies of such second person, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, (x) a director, officer or employee of a person shall not, solely by reason of such status, be considered an Affiliate of such person; and (y) neither the Administrative Agent nor any Lender shall in any event be considered an Affiliate of any Borrower or any other Credit Party or any of their respective Subsidiaries.

"Agreement" shall mean this Credit Agreement, as the same may be from time to time further modified, amended, restated or supplemented.

"Anti-Terrorism Law" means the USA Patriot Act or any other law pertaining to the prevention of future acts of terrorism, in each case as such law may be amended from time to time.

"Applicable Facility Fee Rate" shall mean:

- (i) Initially, until changed hereunder in accordance with the provisions set forth in this definition, the Applicable Facility Fee Rate shall be 27.5 basis points;
- (ii) Commencing with the fiscal quarter of the Borrower ended on December 31, 2004, and continuing with each fiscal quarter thereafter, the Administrative Agent shall determine the Applicable Facility Fee Rate in accordance with the following matrix, based on the Total Funded Debt to EBITDA Ratio:

Total Funded Debt to EBITDA Ratio	Applicable Facility Fee Rate
Greater than 3.25 to 1.0	50.0 bps
Greater than 2.75 to 1.00 but less than or equal to 3.25 to 1.0	35.0 bps
Greater than 2.25 to 1.00, but less than or equal to 2.75 to 1.00	27.5 bps
Greater than 1.75 to 1.00, but less than or equal to 2.25 to 1.00	22.5 bps
Greater than 1.25 to 1.0, but less than or equal to 1.75 to 1.0	20.0 bps
Less than or equal to 1.25 to 1.0	17.5 bps

(iii) Changes in the Applicable Facility Fee Rate based upon changes in the Total Funded Debt to EBITDA Ratio shall become effective on the first day of the month following each Financial Statement Due Date, based upon the Total Funded Debt to EBITDA Ratio in effect at the end of the applicable period covered (in whole or in part) by the financial statements to be delivered by the applicable Financial Statement Due Date. Notwithstanding the foregoing, during any period when the Borrowers have failed to timely deliver their consolidated financial statements referred to in Section 8.1(a) or (b), accompanied by the certificate and calculations referred to in Section 8.1(c), the Applicable Facility Fee Rate shall be the highest rate per annum indicated therefor in the above matrix, regardless of the Total Funded Debt to EBITDA Ratio at such time. Any changes in the Applicable Facility Fee Rate shall be determined by the Administrative Agent in accordance with the provisions set forth in this definition and the Administrative Agent will promptly provide notice of such determinations to the Borrower Representative and the Lenders. Any such determination by the Administrative Agent shall be conclusive and binding absent manifest error.

"Applicable Lending Office" shall mean, with respect to each Lender, the office or offices designated by such Lender to the Administrative Agent as such Lender's lending office or offices for purposes of this Agreement.

"Applicable Margin" shall mean:

- (i) Initially, until changed hereunder in accordance with the following provisions, the Applicable Margin shall be (A) 0.0 basis points for Base Rate Loans, and (B) 97.5 basis points for Eurodollar Loans;
- (ii) Commencing with the fiscal quarter of the Borrowers ended on December 31, 2004, and continuing with each fiscal quarter thereafter, the Administrative Agent shall determine the Applicable Margin in accordance with the following matrix, based on the Total Funded Debt to EBITDA Ratio:

Total Funded Debt to EBITDA Ratio	Applicable Margin for Base Rate Loans	Applicable Margin for Eurodollar Loans
Greater than 3.25 to 1.0	0 bps	137.5 bps

Greater than 2.75 to 1.00 but less than or equal to 3.25 to 1.0	0 bps	115.0 bps
Greater than 2.25 to 1.00 but less than or equal to 2.75 to 1.00	0 bps	97.5 bps
Greater than 1.75 to 1.00 but less than or equal to 2.25 to 1.00	0 bps	77.5 bps
Greater than 1.25 to 1.0 but less than or equal to 1.75 to 1.0	0 bps	67.5 bps
Less than or equal to 1.25 to 1.0	0 bps	57.5 bps

(iii) Changes in the Applicable Margin based upon changes in the Total Funded Debt to EBITDA Ratio shall become effective on the first day of the month following each Financial Statement Due Date based upon the Total Funded Debt to EBITDA Ratio in effect at the end of the applicable period covered (in whole or in part) by the financial statements to be delivered by the applicable Financial Statement Due Date. Notwithstanding the foregoing provisions, during any period when (A) the Borrowers have failed to timely deliver their consolidated financial statements referred to in Section 8.1(a) or (b), accompanied by the certificate and calculations referred to in Section 8.1(c) or (B) a Default under Section 10.1(a) has occurred and is continuing, the Applicable Margin shall be the highest rate per annum indicated therefor in the above matrix, regardless of the Total Funded Debt to EBITDA Ratio at such time. Any changes in the Applicable Margin shall be determined by the Administrative Agent in accordance with the provisions set forth in this definition and the Administrative Agent will promptly provide notice of such determinations to the Borrower Representative and the Lenders. Any such determination by the Administrative Agent shall be conclusive and binding absent manifest error.

"Approved Fund" shall mean a fund that is administered or managed by a Lender or an Affiliate of a Lender.

"Asset Sale" shall mean the sale, transfer or other disposition (including by means of Sale and Lease-Back Transactions, and by means of mergers, consolidations, and liquidations of a corporation, partnership or limited liability company of the interests therein of a Borrower or any Subsidiary) by a Borrower or any Subsidiary to any person of any of their respective assets, provided that the term Asset Sale specifically excludes (i) any sales, transfers or other dispositions of inventory, or obsolete or excess furniture, fixtures, equipment or other property, real or personal, tangible or intangible, in each case in the ordinary course of business, and (ii) any Event of Loss.

"Authorized Officer" shall mean any of the following officers of the Borrower Representative: the President, the Controller or the Chief Financial Officer.

"Bankruptcy Code" shall have the meaning provided in Section 10.1(h)(i).

"Base Rate" shall mean, for any period, a fluctuating interest rate per annum as shall be in effect from time to time which rate per annum shall at all times be equal to the greater of (i) the rate of interest established by KeyBank in Cleveland, Ohio, from time to time, as its prime rate, whether or not publicly announced, which interest rate may or may not be the lowest rate charged by it for commercial loans or other extensions of credit; and (ii) the Federal Funds Effective Rate in effect from time to time, determined one Business Day in arrears, plus 1/2 of 1% per annum.

"Base Rate Loan" shall mean each Loan bearing interest at a rate based upon the Base Rate.

"Borrower" shall have the meaning provided in the first paragraph of this Agreement.

"Borrower Representative" shall mean Gibraltar Industries, Inc.

"Borrowing" shall mean the incurrence of Loans consisting of one Type of Loan, by the Borrower from all of the Lenders on a pro rata basis on a given date (or resulting from Conversions or Continuations on a given date), having in the case of Eurodollar Loans the same Interest Period.

"Business Day" shall mean (i) for all purposes other than as covered by clause (ii) below, any day excluding Saturday, Sunday and any day that shall be in the city in which the Payment Office is located a legal holiday or a day on which banking institutions are authorized by law or other governmental actions to close and (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, Eurodollar Loans, any day that is a Business Day described in clause (i) and that is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"Capital Distribution" shall mean a payment made, liability incurred or other consideration given as a dividend, return of capital, share repurchase or other distribution in respect of any Borrower's or any Subsidiary's capital stock or other equity interest other than a distribution in the form of additional capital stock.

"Capital Lease" as applied to any person shall mean any lease of any property (whether real, personal or mixed) by that person as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of that person.

"Capitalized Lease Obligations" shall mean all obligations under Capital Leases of the Borrowers or any of their Subsidiaries in each case taken at the amount thereof accounted for as liabilities identified as "capital lease obligations" (or any similar words) on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP.

"Cash Equivalents" shall mean any of the following:

(i) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than one year from the date of acquisition;

(ii) Dollar denominated time deposits, certificates of deposit and bankers' acceptances of (x) any Lender or (y) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank, an "Approved Bank"), in each case with maturities of not more than three months from the date of acquisition;

(iii) commercial paper issued by any Lender or Approved Bank or by the parent company of any Lender or Approved Bank and commercial paper issued by, or guaranteed by, any industrial or financial company with a short-term commercial paper rating of at least A-1 or the equivalent thereof

by S&P or at least P-1 or the equivalent thereof by Moody's, or guaranteed by any industrial company with a long term unsecured debt rating of at least A or A2, or the equivalent of each thereof, from S&P or Moody's, as the case may be, and in each case maturing within 90 days after the date of acquisition;

(iv) fully collateralized repurchase agreements entered into with any Lender or Approved Bank having a term of not more than 30 days and covering securities described in clause (i) above;

(v) investments in money market funds substantially all the assets of which are comprised of securities of the types described in clauses (i) through (iv) above;

(vi) investments in money market funds access to which is provided as part of "sweep" accounts maintained with a Lender or an Approved Bank;

(vii) investments in industrial development revenue bonds that (A) "re-set" interest rates not less frequently than quarterly, (B) are entitled to the benefit of a remarketing arrangement with an established broker dealer, and (C) are supported by a direct pay letter of credit covering principal and accrued interest that is issued by an Approved Bank; and

(viii) investments in pooled funds or investment accounts consisting of investments of the nature described in the foregoing clause (vii).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same may be amended from time to time, 42 U.S.C. Section 9601 et seq.

"Change of Control" shall occur if:

(i) during any period of two consecutive calendar years, individuals who at the beginning of such period constituted the Board of Directors of Gibraltar Industries, Inc. (together with any new directors (x) whose election by the Board of Directors of Gibraltar Industries, Inc. was, or (y) whose nomination for election by the shareholders of Gibraltar Industries, Inc. was (prior to the date of the proxy or consent solicitation relating to such nomination), approved by a vote of at least the majority of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved), shall cease for any reason to constitute a majority of the directors then in office; or

(ii) any person or group (as such term is defined in Section 13(d)(3) of the 1934 Act), shall acquire, directly or indirectly, beneficial ownership (within the meaning of Rule 13d-3 and 13d-5 of the 1934 Act) of more than 50%, on a fully diluted basis, of the economic or voting interest in the capital stock of Gibraltar Industries, Inc.

"Charges" shall have the meaning provided in Section 12.23.

"Claims" shall have the meaning set forth in the definition of "Environmental Claims."

"Closing Date" shall mean the date upon which the conditions specified in Section 6.1 are satisfied.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and the rulings issued thereunder. Section references to the Code are to the Code, as in effect at the Closing Date and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefor.

"Co-Documentation Agents" shall have the meaning provided in the first paragraph of this Agreement and shall include any successors to any of the Co-Documentation Agents.

"Collateral" shall mean any collateral covered by any Security Document.

"Commitment" shall mean, with respect to each Lender, the amount, if any, set forth opposite such Lender's name in Schedule 1 hereto as its "Commitment" as the same may be reduced or increased from time to time pursuant to Section 4.2, 4.3, 4.4 and/or 10.2.

"Commitment Percentage" shall mean, at any time for any Lender with a Commitment, the percentage obtained by dividing such Lender's Commitment by the Total Commitment, provided, that if the Total Commitment has been terminated, the Commitment Percentage for each Lender shall be determined by dividing such Lender's Commitment immediately prior to such termination by the Total Commitment immediately prior to such termination.

"Consideration" shall mean, in connection with an Acquisition, the aggregate consideration paid, including borrowed funds, cash, the issuance of securities or notes, the assumption or incurring of liabilities (direct or contingent), the payment of consulting fees or fees for a covenant not to compete and any other consideration paid for the purchase.

"Consolidated Capital Expenditures" shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events amounts expended or capitalized under Capital Leases and Synthetic Leases but excluding any amount representing capitalized interest) by the Borrowers and their Subsidiaries during that period that, in conformity with GAAP, are or are required to be included in the property, plant or equipment reflected in the consolidated balance sheet of the Borrowers and their Subsidiaries.

"Consolidated Depreciation and Amortization Expense" shall mean, for any period, all depreciation and amortization expenses of the Borrower and its Subsidiaries, all as determined for the Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP.

"Consolidated EBIT" shall mean, for any period, Consolidated Net Income for such period; plus (A) the sum of the amounts for such period included in determining such Consolidated Net Income of (i) Consolidated Interest Expense and (ii) Consolidated Income Tax Expense, provided that, notwithstanding anything to the contrary contained herein, the Borrowers' Consolidated EBIT for any Testing Period shall (x) include the appropriate financial items for any person or business unit that has been acquired by a Borrower for any portion of such Testing Period prior to the date of acquisition on a pro forma basis (but excluding anticipated operating synergies), and (y) exclude the appropriate financial items for any person or business unit that has been disposed of by a Borrower, for the portion of such Testing Period prior to the date of disposition, in the case of clauses (x) and (y), subject to the Administrative Agent's reasonable discretion and supporting documentation acceptable to the Administrative Agent.

"Consolidated EBITDA" shall mean, for any period, Consolidated Net Income for such period; plus (A) the sum of the amounts for such period included in determining such Consolidated Net Income of (i) Consolidated Interest Expense, (ii) Consolidated Income Tax Expense, (iii) Consolidated Depreciation and Amortization Expense, and (iv) extraordinary and other non-recurring non-cash losses and charges; less (B) gains on sales of assets and other extraordinary gains and other non-recurring gains; all as determined for the Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP; provided that, notwithstanding anything to the contrary contained herein, the Borrowers' Consolidated EBITDA for any Testing Period shall (x) include the appropriate financial items for any person or business unit that has been acquired by a Borrower for any portion of such Testing Period



prior to the date of acquisition on a pro forma basis (but excluding anticipated operating synergies), and (y) exclude the appropriate financial items for any person or business unit that has been disposed of by a Borrower, for the portion of such Testing Period prior to the date of disposition, in the case of clauses (x) and (y), subject to the Administrative Agent's reasonable discretion and supporting documentation acceptable to the Administrative Agent.

"Consolidated Income Tax Expense" shall mean, for any period, all provisions for taxes based on the net income of the Borrowers or any of their Subsidiaries (including, without limitation, any additions to such taxes, and any penalties and interest with respect thereto), all as determined for the Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP.

"Consolidated Interest Expense" shall mean, for any period, total interest expense (including that which is capitalized, that which is attributable to Capital Leases or Synthetic Leases and the pre-tax equivalent of dividends payable on Redeemable Stock) of the Borrowers and their Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of the Borrowers and their Subsidiaries including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Hedge Agreements.

"Consolidated Net Income" shall mean for any period, the net income (or loss) of the Borrowers and their Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

"Consolidated Net Rent Expense" shall mean, for any period, the total amount of rent or similar obligations required to be paid during such period by the Borrowers or any of their Subsidiaries in respect of Operating Leases, as determined on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

"Consolidated Net Worth" shall mean at any time for the determination thereof all amounts that, in conformity with GAAP, would be included under the caption "total stockholders' equity" (or any like caption) on a consolidated balance sheet of the Borrower as at such date, provided that in no event shall Consolidated Net Worth include any amounts in respect of Redeemable Stock.

"Consolidated Senior Funded Debt" shall mean the Consolidated Total Funded Debt exclusive of Subordinated Indebtedness.

"Consolidated Total Funded Debt" shall mean the sum (without duplication) of all Indebtedness of the Borrowers and each of their Subsidiaries for borrowed money, all as determined on a consolidated basis.

"Continue," "Continuation" and "Continued" each refers to a continuation of Eurodollar Loans for an additional Interest Period as provided in Section 2.2.

"Convert", "Conversion" and "Converted" each refers to a conversion of Loans of one Type into Loans of another Type, pursuant to Section 2.2 or 2.6(b).

"Credit Documents" shall mean this Agreement, the Notes, the Subsidiary Guaranty, the Security Documents and any Letter of Credit Document.

"Credit Event" shall mean any Borrowing, Conversion or Continuation or the issuance of any Letter of Credit or amendment to any Letter of Credit Document that increases the stated Amount of any Letter of Credit, or renews or extends the expiry date of any Letter of Credit.

"Credit Party" shall mean any of the Borrowers and each Subsidiary Guarantor.

"Default" shall mean any event, act or condition that with notice or lapse of time, or both, would constitute an Event of Default.

"Defaulting Lender" shall mean any Lender with, respect to which a Lender Default is in effect.

"Designated Hedge Agreement" shall mean any Hedge Agreement to which a Borrower or any of its Subsidiaries is a party and as to which a Lender or any of its Affiliates is a counterparty that, pursuant to a written instrument signed by the Administrative Agent, has been designated as a Designated Hedge Agreement so that the Borrower's or Subsidiaries' counterparty's credit exposure thereunder will be entitled to share in the benefits of the Subsidiary Guaranty and the Security Documents to the extent the Subsidiary Guaranty and such Security Documents provide guarantees or security for creditors of a Borrower or any Subsidiary under Designated Hedge Agreements. Notwithstanding the foregoing, any Hedge Agreement relating to any Indebtedness of a Borrower under this Agreement shall be deemed to be a Designated Hedge Agreement without the need for a written instrument signed by the Administrative Agent.

"Dollars" and the sign "\$" each means lawful money of the United States.

"Domestic Subsidiary" shall mean any Subsidiary organized under the laws of the United States of America, any State thereof, the District of Columbia, or any United States possession.

"Eligible Assignee" means (a) a Lender (other than a Defaulting Lender), (b) an Affiliate of a Lender (other than a Defaulting Lender), (c) an Approved Fund, and (d) any other person (other than a natural person) approved by (i) the Administrative Agent, (ii) each Letter of Credit Issuer, and (iii) unless an Event of Default has occurred and is continuing, the Borrower Representative (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include any Borrower or any of the Borrowers' Affiliates or Subsidiaries.

"Environmental Claims" shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law or any permit issued under any such law (hereafter "Claims"), including, without limitation, (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the storage, treatment or Release (as defined in CERCLA) of any Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Law" shall mean any applicable Federal, state, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy and rule of common law now or hereafter in effect and in each case as amended, and any binding and enforceable judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment issued to or rendered against a Borrower or any of its Subsidiaries relating to the environment, employee health and safety or Hazardous Materials, including, without limitation, CERCLA; RCRA; the Federal Water Pollution Control Act, 33 U.S.C. Section 2601 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq., the Hazardous Material Transportation Act, 49 U.S.C. Section 1801 et seq. and the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq. (to the extent it regulates occupational exposure to Hazardous Materials); and any state and local or foreign counterparts or equivalents, in each case as amended from time to time.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the Closing Date and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

"ERISA Affiliate" shall mean each person (as defined in Section 3(9) of ERISA), which together with a Borrower or a Subsidiary of the Borrowers, would be deemed to be a "single employer" (i) within the meaning of Section 414(b), (c), (m) or (o) of the Code or (ii) as a result of a Borrower or a Subsidiary of a Borrower being or having been a general partner of such person.

"Eurodollar Loans" shall mean each Loan bearing interest at a rate based on the Adjusted Eurodollar Rate.

"Event of Default" shall have the meaning provided in Section 10.1.

"Event of Loss" shall mean, with respect to any property, (i) the actual or constructive total loss of such property or the use thereof, resulting from destruction, damage beyond repair, or the rendition of such property permanently unfit for normal use from any casualty or similar occurrence whatsoever, (ii) the destruction or damage of a portion of such property from any casualty or similar occurrence whatsoever under circumstances in which such damage cannot reasonably be expected to be repaired, or such property cannot reasonably be expected to be restored to its condition immediately prior to such destruction or damage, within 90 days after the occurrence of such destruction or damage, (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, any property, or (iv) in the case of any property located upon a Leasehold, the termination or expiration of such Leasehold if such termination is likely to materially impair the Agent's access to any material portion of the Collateral.

"Excluded Subsidiaries" shall mean GIT Ltd., Gibraltar Construction Products, Inc. and GSC Flight Service, Inc.

"Exemption Certificate" shall have the meaning provided in Section 5.4(b).

"Existing Credit Agreement" shall mean that certain Fourth Amended and Restated Senior Secured Credit Agreement, dated as of June 28, 2002, among the Borrower, the lenders party thereto, and JPMorgan Chase Bank, N.A. (formerly known as JPMorgan Chase Bank), as Agent, as amended.

"Existing Letters of Credit" shall mean, collectively, the Letters of Credit issued by JPMorgan Chase Bank, N.A. listed on Schedule 1-C for the account of a Borrower.

"Facility" shall mean the credit facility evidenced by the Total Commitment.

"Facility Fees" shall have the meaning provided in Section 4.1(a).

"Facility Termination Date" shall mean the earlier of (i) April 1, 2010, or (ii) the date that the Total Commitment is terminated pursuant to Section 10.2 hereof.

"Federal Funds Effective Rate" shall mean, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent.

"Fees" shall mean all amounts payable pursuant to, or referred to in, Section 4.1, together with any other fees payable pursuant to this Agreement or any other Credit Document.

"Financial Statement Due Date" shall mean each date by which quarterly financial statements are required to be delivered pursuant to Section 8.1(b).

"Foreign Subsidiary" shall mean any Subsidiary that is not a Domestic Subsidiary.

"Fronting Fee" shall have the meaning provided in Section 4.1(c).

"GAAP" shall mean generally accepted accounting principles in the United States of America as in effect from time to time.

"Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guaranty Obligations" shall mean as to any person (without duplication) any obligation of such person guaranteeing any Indebtedness ("Primary Indebtedness") of any other person (the "Primary Obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of such person, whether or not contingent, (a) to purchase any such Primary Indebtedness or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such Primary Indebtedness or (ii) to maintain working capital or equity capital of the Primary Obligor or otherwise to maintain the net worth or solvency of the Primary Obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such Primary Indebtedness of the ability of the Primary Obligor to make payment of such Primary Indebtedness, or (d) otherwise to assure or hold harmless the owner of such Primary Indebtedness against loss in respect thereof; provided, however, that the Guaranty Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guaranty Obligation shall be deemed to be an amount equal to the stated or determinable amount of the Primary Indebtedness (or stated portion thereof) in respect of which such Guaranty Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

"Hazardous Materials" shall mean (i) any petrochemical or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; and (ii) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous wastes," "restrictive hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar meaning and regulatory effect, under any applicable Environmental Law.

"Hedge Agreement" shall mean (i) any interest rate swap agreement, any interest rate cap agreement, any interest rate collar agreement or other similar agreement or arrangement designed to protect against fluctuations in interest rates, and (ii) any currency swap agreement, forward currency purchase agreement or similar agreement or arrangement designed to protect against fluctuations in currency exchange rates.

"Indebtedness" of any person shall mean without duplication (i) all indebtedness of such person for borrowed money; (ii) all bonds, notes, debentures and similar debt securities of such person; (iii) the deferred purchase price of capital assets or services that in accordance with GAAP would be shown on the liability side of the balance sheet of such person; (iv) the face amount of all letters of credit issued for the account of such person and, without duplication, all drafts drawn thereunder; (v) all obligations, contingent or otherwise, of such person in respect of bankers' acceptances; (vi) all Indebtedness of a second person secured by any Lien on any property owned by such first person, whether or not such indebtedness has been assumed; (vii) all Capitalized Lease Obligations of such person; (viii) the present value, determined on the basis of the implicit interest rate, of all basic rental obligations under all

Synthetic Leases of such person; (ix) all obligations of such person to pay a specified purchase price for goods or services whether or not delivered or accepted, i.e., take-or-pay and similar obligations; (x) all net obligations of such person under Hedge Agreements; (xi) the full outstanding balance of trade receivables, notes or other instruments sold with full recourse (and the portion thereof subject to potential recourse, if sold with limited recourse), other than in any such case any thereof sold solely for purposes of collection of delinquent accounts; (xii) the stated value, or liquidation value if higher, of all Redeemable Stock of such person; and (xiii) all Guaranty Obligations of such person (without duplication under clause (vi)); provided, however that (x) neither trade payables nor other similar accrued expenses, in each case arising in the ordinary course of business, nor obligations in respect of insurance policies or performance or surety bonds that themselves are not guarantees of Indebtedness (nor drafts, acceptances or similar instruments evidencing the same nor obligations in respect of letters of credit supporting the payment of the same), shall constitute Indebtedness; and (y) the Indebtedness of any person shall in any event include (without duplication) the Indebtedness of any other entity (including any general partnership in which such person is a general partner) to the extent such person is liable thereon as a result of such person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide expressly that such person is not liable thereon.

"Interest Coverage Ratio" shall mean, for any Testing Period, the ratio of (i) Consolidated EBIT to (ii) Consolidated Interest Expense, in each case on a consolidated basis for the Borrowers and their Subsidiaries for the Testing Period.

"Interest Period" shall mean, with respect to each Eurodollar Loan, a period of one, two, three or six months as selected by the Borrower Representative, provided that (i) the initial Interest Period for any Borrowing of Eurodollar Loans shall commence on the date of such Borrowing (the date of a Borrowing resulting from a Conversion or Continuation shall be the date of such Conversion or Continuation) and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the day on which the next preceding Interest Period expires; (ii) if any Interest Period begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month; (iii) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day, provided that if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; (iv) no Interest Period for any Eurodollar Loan may be selected that would end after the Facility Termination Date; and (v) if, upon the expiration of any Interest Period, the Borrower has failed to (or may not) elect a new Interest Period to be applicable to the respective Borrowing of Eurodollar Loans as provided above, the Borrower shall be deemed to have elected to Convert such Borrowing to a Base Rate Loan effective as of the expiration date of such current Interest Period.

"Investment" shall mean (i) any direct or indirect purchase or other acquisition by the Borrowers or any of their Subsidiaries of any of the capital stock or other equity interest of any other person (other than a person that is, or after giving effect to such purchase or acquisition would be, a Subsidiary Guarantor), including any partnership or joint venture interest in such person; or (ii) any loan or advance to, guarantee or assumption of debt or purchase or other acquisition of any other debt of, any person (other than a person that is, or after giving effect to such loan, advance or capital contribution would be, a Subsidiary Guarantor), by the Borrowers or any of their Subsidiaries.

"KeyBank" shall mean KeyBank National Association, a national banking association, together with its successors and assigns.

"Leaseholds" of any person means all the right, title and interest of such person as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

"Lender" shall have the meaning provided in the first paragraph of this Agreement, and shall include any Lender that becomes a party hereto pursuant to Section 12.4(c).

"Lender Default" shall mean (i) the refusal (which has not been retracted) of a Lender in violation of the requirements of this Agreement to make available its portion of any incurrence of Loans or Mandatory Borrowing or to fund its portion of any unreimbursed payment under Section 3.4(c) or (ii) a Lender having notified the Administrative Agent that it does not intend to comply with the obligations under Section 2.1, Section 2.8 and/or Section 3.4(c), in the case of either (i) or (ii) as a result of the appointment of a receiver or conservator with respect to such Lender at the direction or request of any regulatory agency or authority.

"Lender Register" shall have the meaning provided in Section 12.15.

"Letter of Credit" shall have the meaning provided in Section 3.1(a).

"Letter of Credit Commitment Amount" shall mean \$25,000,000.

"Letter of Credit Documents" shall have the meaning specified in Section 3.2(a).

"Letter of Credit Fee" shall have the meaning provided in Section 4.1(b).

"Letter of Credit Issuer" shall mean (i) KeyBank or any of its Affiliates, (ii) JPMorgan Chase Bank, N.A., with respect to the Existing Letters of Credit; or (iii) if KeyBank is unable or unwilling to issue any given Letter of Credit, such other Lender that is requested, and agrees, to so act by the Borrower, and is approved by the Required Lenders.

"Letter of Credit Obligor" shall have the meaning provided in Section 3.1(a).

"Letter of Credit Outstandings" shall mean, at any time, the sum, without duplication, of (i) the aggregate Stated Amount of all outstanding Letters of Credit and (ii) the aggregate amount of all Unpaid Drawings.

"Letter of Credit Request" shall have the meaning provided in Section 3.2(a).

"Lien" shall mean any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof).

"Loan" and "Loans" shall have the meanings provided in Section 2.1.

"Mandatory Borrowing" shall have the meaning provided in Section 2.8.

"Margin Stock" shall have the meaning provided in Regulation U.

"Material Adverse Effect" shall mean any or all of the following: (i) any material adverse effect on the business, operations, property, assets, liabilities, financial or other condition, or prospects of, the Borrowers or the Borrowers and their Subsidiaries, taken as a whole; (ii) any material adverse effect on the ability of any Borrower or any other material Credit Party to perform any of its obligations under the Credit Documents to which it is a party; (iii) any material adverse effect on the ability of the Borrowers and their Subsidiaries, taken as a whole, to pay their liabilities and obligations as they mature or

become due; or (iv) any material adverse effect on the validity, effectiveness or enforceability, as against any Credit Party, of any of the Credit Documents to which it is a party.

"Maximum Rate" shall have the meaning provided in Section 12.23.

"Minimum Borrowing Amount" shall mean, with respect to Base Rate Loans, \$1,000,000, with minimum increments thereafter of \$500,000, and with respect to Eurodollar Loans, \$5,000,000, with minimum increments thereafter of \$1,000,000.

"Moody's" shall mean Moody's Investors Service, Inc. and its successors.

"Multiemployer Plan" shall mean a multiemployer plan, as defined in Section 4001(a)(3) of ERISA to which any Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

"Multiple Employer Plan" shall mean an employee benefit plan, other than a Multiemployer Plan, to which the Borrower or any ERISA Affiliate, and one or more employers other than the Borrowers or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which any Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

"Net Worth" shall mean, as of the last day of any fiscal quarter of the Borrowers, all amounts which should be included under shareholders' equity on a balance sheet of an entity, determined in accordance with GAAP, in each case on a consolidated basis for the Borrowers and their Subsidiaries as of the last day of any fiscal quarter of the Borrowers.

"1934 Act" shall mean the Securities Exchange Act of 1934, as amended.

"Non-Defaulting Lender" shall mean each Lender other than a Defaulting Lender.

"Note" and "Notes" shall have the meanings provided in Section 2.4(d).

"Notice of Borrowing, Continuation or Conversion" shall have the meaning provided in Section 2.2(b).

"Notice Office" shall mean the office of the Administrative Agent set forth on Schedule 1-B.

"Obligations" shall mean all amounts, direct or indirect, contingent or absolute, of every type or description, and at any time existing, owing by any Borrower or any other Credit Party to the Administrative Agent, any Lender or any Letter of Credit Issuer pursuant to the terms of this Agreement or any other Credit Document (including, but not limited to, interest and fees that accrue after the commencement by or against any Credit Party of any insolvency proceeding, regardless of whether such interest and fees are allowed claims in such proceeding).

"Operating Lease" as applied to any person shall mean any lease of any property (whether real, personal or mixed) by that person as lessee that, in conformity with GAAP, is not accounted for as a Capital Lease on the balance sheet of that person.

"Participant" shall have the meaning provided in Section 3.4(a).

"Payment Office" shall mean the office of the Administrative Agent set forth on Schedule 1-B.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"Permitted Acquisition" shall mean and include any Acquisition as to which all of the following conditions are satisfied:

- (i) such Acquisition involves a line or lines of business that will not substantially change the general nature of the business in which the Borrowers and their Subsidiaries, considered as an entirety, are engaged on the Closing Date.
- (ii) no Default or Event of Default shall exist prior to or immediately after giving effect to such Acquisition;
- (iii) the Borrowers would, after giving effect to such Acquisition, on a *pro forma* basis, be in compliance with the financial covenants set forth in Section 9.7;
- (iv) the Borrowers would, after giving effect to such Acquisition, on a *pro forma* basis, have Post-Acquisition Liquidity of no less than \$25,000,000; and
- (v) at least five Business Days prior to the completion of such Acquisition, the Borrowers shall have delivered to the Administrative Agent and the Lenders (A) in the case of any Acquisition in which the aggregate Consideration to be paid is in excess of \$5,000,000 (or in the case of any Acquisition in which the Consideration to be paid, together with the aggregate Consideration paid in connection with all other Permitted Acquisitions made during the same fiscal quarter as such Acquisition, is in excess of the aggregate amount of \$5,000,000), a certificate of an Authorized Officer of the Borrower Representative demonstrating, in reasonable detail, the computation of the financial covenants referred to in Section 9.7 on a *pro forma* basis as of the most recently ended fiscal quarter, and (B) in the case of any Acquisition in which the aggregate Consideration is in excess of \$10,000,000, historical financial statements relating to the business or person to be acquired, financial projections relating to the Borrowers and their Subsidiaries after giving effect to such Acquisition and such other information as the Administrative Agent may reasonably request.

"Permitted Lien" shall mean any Lien permitted by Section 9.3.

"Person" shall mean any individual, partnership, joint venture, firm, corporation, limited liability company, association, trust or other entity or any government or political subdivision or any agency, department or instrumentality thereof.

"Plan" shall mean any multiemployer or single-employer plan, as defined in Section 4001 of ERISA, that is maintained or contributed to by (or to which there is an obligation to contribute by) a Borrower or a Subsidiary of a Borrower or an ERISA Affiliate, and each such plan for the five year period immediately following the latest date on which a Borrower, or a Subsidiary of a Borrower or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to such plan.

"Post-Acquisition Liquidity" shall mean the sum of Unutilized Total Commitment and any unencumbered cash balances of the Borrowers and their Subsidiaries.

"Primary Indebtedness" shall have the meaning provided in the definition of "Guaranty Obligations."

"Primary Obligor" shall have the meaning provided in the definition of "Guaranty Obligations."

"Prohibited Transaction" shall mean a transaction with respect to a Plan that is prohibited under Section 4975 of the Code or Section 406 of ERISA and not exempt under Section 4975 of the Code or Section 408 of ERISA.

"RCRA" shall mean the Resource Conservation and Recovery Act, as the same may be amended from time to time, 42 U.S.C. Section 6901 et seq.

"Real Property" of any person shall mean all of the right, title and interest of such person in and to land, improvements and fixtures, including Leaseholds.

"Redeemable Stock" shall mean with respect to any person any capital stock or similar equity interests of such person that: (i) is by its terms subject to mandatory redemption, in whole or in part, pursuant to a sinking fund, scheduled redemption or similar provisions, at any time prior to the Facility Termination Date; or (ii) otherwise is required to be repurchased or retired on a scheduled date or dates, upon the occurrence of any event or circumstance, at the option of the holder or holders thereof, or otherwise, at any time prior to the Facility Termination Date, other than any such repurchase or retirement occasioned by a "change of control" or similar event.

"Reference Banks" shall mean (i) KeyBank and (ii) any other Lender or Lenders selected as a Reference Bank by the Administrative Agent.

"Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

"Regulation U" shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"Related Parties" shall mean, with respect to any person, such person's Affiliates and the directors, officers, employees, agents and advisors of such person and of such Affiliate.

"Reportable Event" shall mean an event described in Section 4043 of ERISA or the regulations thereunder with respect to a Plan, other than those events as to which the notice requirement is waived under subsections .22, .23, .25, .27, .28, .29, .30, .31, .32, .34, .35, .62, .63, .64, .65 or .67 of PBGC Regulation Section 4043.

"Required Lenders" shall mean Non-Defaulting Lenders whose outstanding Loans and Unutilized Commitments constitute at least 51% of the sum of the total outstanding Loans and Unutilized Commitments of Non-Defaulting Lenders.

"Sale and Lease-Back Transaction" shall mean any arrangement with any person providing for the leasing by a Borrower or any Subsidiary of a Borrower of any property (except for temporary leases for a term, including any renewal thereof, of not more than one year and except for leases between a Borrower and a Subsidiary or between Subsidiaries), which property has been or is to be sold or transferred by a Borrower or such Subsidiary to such person.

"S&P" shall mean Standard & Poor's Ratings Group, a division of McGraw Hill, Inc., and its successors.

"SEC" shall mean the United States Securities and Exchange Commission.

"SEC Regulation D" shall mean Regulation D as promulgated under the Securities Act of 1933, as amended, as the same may be in effect from time to time.

"Security Agreement" shall have the meaning provided in Section 6.1(d).

"Security Documents" shall mean the Security Agreement, and each other document pursuant to which any Lien or security interest (i) is granted by any Credit Party to the Administrative Agent for the benefit of the Lenders or Administrative Agent or (ii) is perfected, in each case as security for any of the Obligations.

"Senior Funded Debt to EBITDA Ratio" shall mean, for any Testing Period, the ratio of (i) Consolidated Senior Funded Debt to (ii) Consolidated EBITDA, in each case on a consolidated basis for the Borrowers and their Subsidiaries for such Testing Period.

"Share Repurchase" shall mean the purchase, acquisition, repurchase, redemption or retirement by a Borrower or any of its Subsidiaries of any issued and outstanding capital stock or other equity interests of a Borrower or any of its Subsidiaries except as required pursuant to any Plan.

"Standard Permitted Liens" shall mean the following:

- (i) Liens for taxes not yet delinquent or Liens for taxes being contested in good faith and by appropriate proceedings for which adequate reserves in accordance with GAAP have been established;
- (ii) Liens in respect of property or assets imposed by law that were incurred in the ordinary course of business, such as carriers', warehousemen's, materialmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, that do not in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Borrower or any Subsidiary and do not secure any Indebtedness;
- (iii) Liens created by this Agreement or the other Credit Documents;
- (iv) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 10.1(g);
- (v) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; and Liens to secure the performance of tenders, statutory obligations, contract bids, government contracts, performance and return-of-money bonds and other similar obligations, incurred in the ordinary course of business (exclusive of obligations in respect of the payment for borrowed money), whether pursuant to statutory requirements, common law or consensual arrangements;
- (vi) Leases or subleases granted in the ordinary course of business to others not interfering in any material respect with the business of the Borrowers or any of their Subsidiaries and any interest or title of a lessor under any lease not in violation of this Agreement;

(vii) Easements, rights-of-way, zoning or other restrictions, charges, encumbrances, defects in title, prior rights of other persons, and obligations contained in similar instruments, in each case that do not involve, and are not likely to involve at any future time, either individually or in the aggregate, (A) a substantial and prolonged interruption or disruption of the business activities of the Borrowers and their Subsidiaries, or (B) a Material Adverse Effect;

(viii) Liens arising from the rights of lessors under leases (including financing statements regarding property subject to lease) permitted pursuant to this Agreement, provided that such Liens are only in respect of the property subject to, and secure only, the respective lease (and any other lease with the same or an affiliated lessor); and

(ix) Rights of consignors of goods, whether or not perfected by the filing of a financing statement under the UCC.

"Stated Amount" of each Letter of Credit shall mean the maximum amount available to be drawn thereunder (regardless of whether any conditions or other requirements for drawing could then be met).

"Subordinated Indebtedness" shall mean any Indebtedness that has been subordinated to the Obligations in such manner and to such extent as the Administrative Agent (acting on instructions from the Required Lenders) may require.

"Subsidiary" of any person shall mean and include (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such person directly or indirectly through Subsidiaries, and (ii) any partnership, limited liability company, association, joint venture or other entity in which such person directly or indirectly through Subsidiaries, has more than a 50% equity interest at the time or in which the Borrowers, one or more other subsidiaries of the Borrowers or the Borrowers and one or more Subsidiaries of the Borrowers, directly or indirectly, has the power to direct the policies, management and affairs thereof; provided, however, that notwithstanding the foregoing, an Excluded Subsidiary shall not be deemed a Subsidiary of the Borrowers hereunder unless or until such Excluded Subsidiary is required to become a Subsidiary Guarantor pursuant to Section 8.10 hereof. Unless otherwise expressly provided, all references herein to "Subsidiary" shall mean a Subsidiary of the Borrowers.

"Subsidiary Guarantor" shall mean any Subsidiary that is a party to the Subsidiary Guaranty.

"Subsidiary Guaranty" shall have the meaning provided in Section 6.1(d).

"Swingline Lender" shall mean KeyBank National Association, and shall include any successor to the Swingline Lender.

"Swingline Loan" and "Swingline Loans" shall have the meanings provided in Section 2.8.

"Swingline Loan Rate" shall mean, for the applicable Swingline Loan, a rate equal to the Swingline Lender's cost of funds on the Business Day on which the Swingline Loan is made plus the Applicable Margin for Eurodollar Loans.

"Swingline Loan Maturity Date" shall mean the last day of the period for which a particular Swingline Loan is outstanding as selected by a Borrower, provided, however, in no event shall such period exceed 14 days or exceed the Facility Termination Date.

"Syndication Agent" shall have the meaning provided in the first paragraph of this Agreement and shall include any successor to the Syndication Agent.

"Synthetic Lease" shall mean any lease (i) that is accounted for by the lessee as an Operating Lease, and (ii) under which the lessee is intended to be the "owner" of the leased property for Federal income tax purposes.

"Taxes" shall have the meaning provided in Section 5.4(a).

"Testing Period" shall mean for any determination a single period consisting of the four consecutive fiscal quarters of the Borrowers then last ended (whether or not such quarters are all within the same fiscal year), except that if a particular provision of this Agreement indicates that a Testing Period shall be of a different specified duration, such Testing Period shall consist of the particular fiscal quarter or quarters then last ended that are so indicated in such provision.

"Total Commitment" shall mean the aggregate amount of the Commitments of the Lenders, as such commitment may be increased pursuant to Section 4.4 or decreased pursuant to the terms of this Agreement. The amount of the Total Commitment on the Closing Date is \$250,000,000.

"Total Funded Debt to EBITDA Ratio" shall mean, for any Testing Period, the ratio of (i) Consolidated Total Funded Debt to (ii) Consolidated EBITDA, in each case on a consolidated basis for the Borrowers and their Subsidiaries for such Testing Period.

"Type" shall mean any type of Loan determined with respect to the interest option applicable thereto, i.e., a Base Rate Loan or a Eurodollar Loan.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time. Unless otherwise specified, the UCC shall refer to the UCC as in effect in the State of New York.

"Unfunded Current Liability" of any Plan shall mean the amount, if any, by which the actuarial present value of the accumulated plan benefits under the Plan as of the close of its most recent plan year exceeds the fair market value of the assets allocable thereto, each determined in accordance with Statement of Financial Accounting Standards No. 87, based upon the actuarial assumptions used by the Plan's actuary in the most recent annual valuation of the Plan.

"United States" and "U.S." each means United States of America.

"Unpaid Drawing" shall have the meaning provided in Section 3.3(a).

"Unutilized Commitment" for any Lender at any time shall mean the excess of (i) such Lender's Commitment at such time over (ii) the sum of (x) the principal amount of Loans made by such Lender and outstanding at such time and (y) such Lender's Commitment Percentage of Letter of Credit Outstandings at such time.

"Unutilized Total Commitment" shall mean, at any time, the excess of (i) the Total Commitment at such time over (ii) the sum of (x) the aggregate principal amount of all Loans and Swingline Loans then outstanding plus (y) the aggregate Letter of Credit Outstandings at such time.

"USA Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001.

1.2 Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" each mean "to but excluding" and the word "through" means "through and including."

1.3 Accounting Terms. Except as otherwise specifically provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time.

1.4 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any person shall be construed to include such person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections, Schedules and Exhibits shall be construed to refer to Sections of, and Schedules and Exhibits to, this Agreement, and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all real property, tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and interests in any of the foregoing.

## ARTICLE II. AMOUNT AND TERMS OF LOANS

2.1 Loans. Subject to and upon the terms and conditions herein set forth, each Lender severally agrees to make a loan or loans (each a "Loan" and, collectively, the "Loans") to the Borrowers, which Loans shall be drawn, to the extent such Lender has a Commitment, as hereinafter provided. Loans (i) may be incurred by the Borrowers at any time from the Closing Date until the Facility Termination Date; (ii) except as otherwise provided, may, at the option of the Borrower, be incurred and maintained as, or Converted into, Loans that are Base Rate Loans or Eurodollar Loans, in each case denominated in Dollars, provided that all Loans made as part of the same Borrowing shall, unless otherwise specifically provided herein, consist of Loans of the same Type; (iii) may be repaid or prepaid and re-borrowed in accordance with the provisions hereof; and (iv) shall not exceed for any Lender at any time outstanding that aggregate principal amount that, when added to the product at such time of (A) such Lender's Commitment Percentage, times (B) the aggregate Letter of Credit Outstandings plus the aggregate outstanding principal of the Swingline Loans, equals the Commitment of such Lender at such time. In addition, no Loans shall be incurred at any time if, after giving effect thereto, the Borrowers would be required to prepay Loans in accordance with Section 5.2(b).

### 2.2 Borrowing, Continuation or Conversion of Loans.

(a) Borrowings, Continuations and Conversions. The Borrowers may, in accordance with the provisions set forth in this Section and subject to the other terms and conditions of this Agreement, (i) request Borrowings, (ii) Convert all or a portion of the outstanding principal amount of Loans of one Type into a Borrowing or Borrowings of another Type of Loans that can be made pursuant to the Facility and (iii) Convert a Borrowing of Eurodollar Loans at the end of the applicable Interest Period as a new Eurodollar Loan with a new Interest Period, provided that (A) any Conversion of Eurodollar Loans into Base Rate Loans shall be made on, and only on, the last day of an Interest Period for such Eurodollar Loans, (B) Base Rate Loans may only be Converted into Eurodollar Loans if no Default under Section 10.1(a) or Event of Default is in existence on the date of the Conversion unless the Required Lenders otherwise agree, and (C) Base Rate Loans may not be Converted into Eurodollar Loans during any period when such Conversion is not permitted under Section 2.6.

(b) Notice of Borrowings, Continuation and Conversion. Each Borrowing, Continuation or Conversion of a Loan shall be made upon notice in the form provided for below, which notice shall be provided by the Borrower Representative to the Administrative Agent at its Notice Office not later than (i) in the case of each Borrowing or Continuation of or Conversion into a Eurodollar Loan, 12:00 noon (local time at its Notice Office) at least three Business Days' prior to the date of such Borrowing, Continuation or Conversion, and (ii) in the case of each Borrowing of or Conversion to a Base Rate Loan, 12:00 noon (local time at its Notice Office) on the proposed date of such Borrowing or Conversion. Each such request shall be made by an Authorized Officer of the Borrower Representative delivering written notice of such request substantially in the form of Exhibit B hereto (each such notice, a "Notice of Borrowing, Continuation or Conversion") or by telephone (to be confirmed immediately in writing by delivery by an Authorized Officer of a Notice of Borrowing, Continuation or Conversion), and in any event each such request shall be irrevocable and shall specify (A) the aggregate principal amount of the Loans to be made (which shall be at least the Minimum Borrowing Amount) pursuant to such Borrowing or, if applicable, the Borrowings to be Continued or Converted, (B) the date of the Borrowing, Continuation or Conversion (which shall be a Business Day), (C) whether the Borrowing will consist of Base Rate Loans or Eurodollar Loans or, in the case of a Continuation or Conversion, the Loans to be Continued or Converted, and (D) if applicable, the initial Interest Period thereto or, in the case of a Continuation, the new Interest Period. Without in any way limiting the obligation of the Borrower Representative to confirm in writing any telephonic notice permitted to be given hereunder, the Administrative Agent may act prior to receipt of written confirmation without liability upon the basis of such telephonic notice believed by the Administrative Agent in good faith to be from an Authorized Officer of the Borrower Representative entitled to give telephonic notices under this Agreement on behalf of the Borrower. In each such case, the Administrative Agent's record of the terms of such telephonic notice shall be conclusive absent manifest error.

(c) Minimum Borrowing Amount. The aggregate principal amount of each Borrowing by the Borrowers shall not be less than the Minimum Borrowing Amount. No partial Conversion of a Borrowing of Eurodollar Loans shall reduce the outstanding principal amount of the Eurodollar Loans made pursuant to such Borrowing to less than the Minimum Borrowing Amount applicable thereto.

(d) Maximum Borrowings. More than one Borrowing may be incurred by the Borrowers on any day, provided that (i) if there are two or more Borrowings on a single day by the Borrowers that consist of Eurodollar Loans, each such Borrowing shall have a different initial Interest Period, and (ii) at no time shall there be more than six Borrowings of Eurodollar Loans outstanding hereunder.

(e) Notice to Lenders. The Administrative Agent shall promptly give each Lender written notice (or telephonic notice promptly confirmed in writing) of (i) each proposed Borrowing, (ii) such Lender's proportionate share thereof and (iii) the other matters covered by the Notice of Borrowing, Continuation or Conversion relating thereto.

### 2.3 Pro Rata Borrowings; Disbursement of Funds.

(a) Loans to be Made Pro Rata. The obligation of each Lender to make Loans hereunder and the Commitment of each Lender are several and not joint obligations. All Borrowings shall be made by the Lenders *pro rata* on the basis of their respective Commitments. It is understood that no Lender shall be responsible for any default by any other Lender in its obligation to make Loans hereunder and that each Lender shall be obligated to make the Loans provided to be made by it hereunder, regardless of the failure of any other Lender to fulfill its Commitment.

(b) Funding of Loans. No later than 2:00 P.M. (local time at the Payment Office) on the date specified in each Notice of Borrowing, Continuation or Conversion, each Lender will make available its *pro rata* share, if any, of each Borrowing requested to be made on such date in the manner provided below. All amounts shall be made available to the Administrative Agent in Dollars and immediately available funds at the Payment Office and the Administrative Agent shall promptly make available to the Borrower Representative by depositing to its account at the Payment Office the aggregate of the amounts so made available in the type of funds received.

(c) Advance Funding. Unless the Administrative Agent shall have been notified by any Lender prior to the date of Borrowing that such Lender does not intend to make available to the Administrative Agent its portion of the Borrowing or Borrowings to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of Borrowing, and the Administrative Agent, in reliance upon such assumption, may (in its sole discretion and without any obligation to do so) make available to the Borrowers a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender and the Administrative Agent has made available same to the Borrowers, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower Representative, and the Borrowers shall immediately pay such corresponding amount to the Administrative Agent. The Administrative Agent shall also be entitled to recover from such Lender or the Borrowers, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrowers to the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (x) if paid by such Lender, the overnight Federal Funds Effective Rate or (y) if paid by the Borrowers, the then applicable rate of interest, calculated in accordance with Section 2.5, for the respective Loans (but without any requirement to pay any amounts in respect thereof pursuant to Section 2.7).

(d) Rights Not Prejudiced. Nothing herein and no subsequent termination of the Commitments pursuant to Section 4.2 or 4.3 shall be deemed to relieve any Lender from its obligation to fulfill its commitments hereunder and in existence from time to time or to prejudice any rights that the Borrowers may have against any Lender as a result of any default by such Lender hereunder.

#### 2.4 Evidence of Obligations.

(a) Loan Accounts of Lenders. The Obligations of the Borrowers owing to each Lender hereunder shall be evidenced by, and each Lender shall maintain in accordance with its usual practice, an account or accounts established by such Lender, which account or accounts shall include the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) Loan Accounts of Administrative Agent. The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof, and the Interest Period and applicable interest rate if such Loan is a Eurodollar Loan, (ii) the amount of any principal due and payable or to become due and payable from the Borrowers to each Lender hereunder, and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(c) Effect of Loan Accounts, etc. The entries made in the accounts maintained pursuant to Section 2.4(a) and (b) shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; provided, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay or prepay the Loans or any such other amounts in accordance with the terms of this Agreement.

(d) Notes. Upon request of any Lender, the Borrowers' obligation to pay the principal of, and interest on, the Loans made to it by each Lender shall be evidenced by a joint and several promissory note of the Borrowers substantially in the form of Exhibit A with blanks appropriately completed in conformity herewith (each a "Note" and, collectively, the "Notes"), provided that the decision of any Lender to not request a Note shall in no way detract from the Borrowers' obligation to repay the Loans and other amounts owing by the Borrowers to such Lender. Any Note issued by the Borrowers to a Lender shall: (i) be executed by the Borrowers; (ii) be payable to the order of such Lender and be dated as of the Closing Date (or in the case of any Note issued in connection with an Assignment Agreement, the effective date of such Assignment Agreement); (iii) be payable in the principal amount of Loans evidenced thereby; (iv) mature on the Facility Termination Date; (v) bear interest as provided in Section 2.5 in respect of the Base Rate Loans or Eurodollar Loans, as the case may be, evidenced thereby; (vi) be subject to mandatory prepayment as provided in Section 5.2; and (vii) be entitled to the benefits of this Agreement and the other Credit Documents.

#### 2.5 Interest.

(a) Interest on Base Rate Loans. During such periods as a Loan is a Base Rate Loan, it shall bear interest at a fluctuating rate per annum that shall at all times be equal to the Base Rate in effect from time to time plus the Applicable Margin in effect from time to time for such Loan.

(b) Interest on Eurodollar Loans. During such periods as a Loan is a Eurodollar Loan, it shall bear interest at a rate per annum that shall at all times during an Interest Period therefor be the relevant Adjusted Eurodollar Rate for such Eurodollar Loan for such Interest Period plus the Applicable Margin in effect from time to time for such Loan.

(c) Default Interest. Notwithstanding the above provisions, if a Default under Section 10.1(a) or Event of Default is in existence, all outstanding amounts of principal and, to the extent permitted by law, all overdue interest, in respect of each Loan and each Swingline Loan shall bear interest, payable on demand by the Administrative Agent, at a rate per annum equal to 2% per annum above the interest rate that is or would be applicable from time to time pursuant to Section 2.5(a) or 2.8(c), as applicable, which shall be set based on the highest Applicable Margin. If any amount (other than the principal of and interest on the Loans or Swingline Loans) payable by the Borrowers under the Credit Documents is not paid when due, such amount shall bear interest, payable on demand by the Administrative Agent, at a rate per annum equal to 2% per annum above the interest rate that is or would be applicable from time to time pursuant to Section 2.5(a) in the case of Loans or 2.8(c) in the case of Swingline Loans.

(d) Accrual and Payment of Interest. Interest shall accrue from and including the date of any Borrowing to but excluding the date of any prepayment or repayment thereof and shall be payable:

(i) in respect of each Base Rate Loan, quarterly in arrears on the last Business Day of each March, June, September and December,

(ii) in respect of each Eurodollar Loan, on the last day of each Interest Period applicable thereto and, in the case of an Interest Period in excess of three months, on the dates that are successively three months after the commencement of such Interest Period, and

(iii) on any repayment, prepayment or Conversion (on the amount repaid, prepaid or Converted), at maturity (whether by acceleration or otherwise) and, after such maturity, on demand; and



(iv) in respect of each Swingline Loan, on the payment date of the applicable Swingline Loan.

(e) Computations of Interest. All computations of interest on Eurodollar Loans and Swingline Loans and other amounts (other than Base Rate Loans) hereunder shall be made on the actual number of days elapsed over a year of 360 days, and all computations of interest on Base Rate Loans hereunder shall be made on the actual number of days elapsed over a year of 365 or 366 days, as applicable.

(f) Information as to Interest Rates. The Administrative Agent upon determining the interest rate for any Borrowing or any change in interest rate applicable to any Borrowing as a result of a change in the Applicable Margin, a change in the Base Rate, a change in Swingline Lender's cost of funds (in the case of the Swingline Loans) the implementation of the default rate or otherwise, shall promptly notify the Borrower Representative and the Lenders thereof, provided that (i) any such change shall be immediately effective as and when such change occurs without regard to when the Administrative Agent provides any such notice, and (ii) the failure of the Administrative Agent to give any such notice shall in no way detract from or affect the obligation of the Borrowers to pay interest at the changed rate. If the Administrative Agent is unable to determine the Adjusted Eurodollar Rate for any Borrowing of Eurodollar Loans based on the quotation service referred to in clause (i) of the definition of the term Adjusted Eurodollar Rate, it will promptly so notify the Reference Banks and each Reference Bank will furnish the Administrative Agent timely information for the purpose of determining the Adjusted Eurodollar Rate for such Borrowing. If any one or more of the Reference Banks shall not timely furnish such information, the Administrative Agent shall determine the Adjusted Eurodollar Rate for such Borrowing on the basis of timely information furnished by the remaining Reference Banks.

## 2.6 Increased Costs, Illegality, etc.

(a) In the event that (x) in the case of clause (i) below, the Administrative Agent or (y) in the case of clauses (ii) and (iii) below, any Lender, shall have determined on a reasonable basis (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto):

(i) on any date for determining the Adjusted Eurodollar Rate for any Interest Period that, by reason of any changes arising after the Closing Date affecting the London interbank market, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of Adjusted Eurodollar Rate; or

(ii) at any time, that such Lender shall incur increased costs or reductions in the amounts received or receivable hereunder in an amount that such Lender deems material with respect to any Eurodollar Loans (other than any increased cost or reduction in the amount received or receivable resulting from the imposition of or a change in the rate of taxes or similar charges) because of (x) any change since the Closing Date in any applicable law, governmental rule, regulation, guideline, order or request (whether or not having the force of law), or in the interpretation or administration thereof and including the introduction of any new law or governmental rule, regulation, guideline, order or request (such as, for example, but not limited to, a change in official reserve requirements, but, in all events, excluding reserves includable in the Eurodollar Rate pursuant to the definition thereof) or (y) other circumstances adversely affecting the London interbank market or the position of such Lender in such market; or

(iii) at any time, that the making or continuance of any Eurodollar Loan has become unlawful by compliance by such Lender in good faith with any change since the Closing Date in any law, governmental rule, regulation, guideline or order, or the interpretation or application thereof, or would conflict with any thereof not having the force of law but with which such Lender customarily complies or has become impracticable as a result of a contingency occurring after the Closing Date that materially adversely affects the London interbank market;

then, and in each such event, such Lender (or the Administrative Agent in the case of clause (i) above) shall (x) on or promptly following such date or time and (y) within 10 Business Days of the date on which such event no longer exists give notice (by telephone confirmed in writing) to the Borrower and to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Lenders). Thereafter (x) in the case of clause (i) above, Eurodollar Loans shall no longer be available until such time as the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice by the Administrative Agent no longer exist, and any Notice of Borrowing, Notice of Conversion or Notice of Continuation given by the Borrower with respect to Eurodollar Loans that have not yet been incurred, Converted or Continued shall be deemed rescinded by the Borrower or, in the case of a Notice of Borrowing, shall, at the option of the Borrower Representative, be deemed converted into a Notice of Borrowing for Base Rate Loans to be made on the date of Borrowing contained in such Notice of Borrowing, (y) in the case of clause (ii) above, the Borrowers shall pay to such Lender, upon written demand by the Administrative Agent, on behalf of such Lender therefor, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender shall determine) as shall be required to compensate such Lender, for such increased costs or reductions in amounts receivable hereunder (a written notice as to the additional amounts owed to such Lender, showing the basis for the calculation thereof, which basis must be reasonable, submitted to the Borrower Representative by such Lender shall, absent manifest error, be final and conclusive and binding upon all parties hereto) and (z) in the case of clause (iii) above, the Borrowers shall take one of the actions specified in Section 2.6(b) as promptly as possible and, in any event, within the time period required by law.

(b) At any time that any Eurodollar Loan is affected by the circumstances described in Section 2.6(a)(ii) or (iii), the Borrowers may (and in the case of a Eurodollar Loan affected pursuant to Section 2.6(a)(iii) the Borrowers shall) either (i) if the affected Eurodollar Loan is then being made pursuant to a Borrowing, by giving the Administrative Agent telephonic notice (confirmed promptly in writing) thereof on the same date that the Borrower Representative was notified by a Lender pursuant to Section 2.6(a)(ii) or (iii), cancel said Borrowing, convert the related Notice of Borrowing into one requesting a Borrowing of Base Rate Loans or require the affected Lender to make its requested Loan as a Base Rate Loan, or (ii) if the affected Eurodollar Loan is then outstanding, upon at least one Business Day's notice to the Administrative Agent, require the affected Lender to Convert each such Eurodollar Loan into a Base Rate Loan, provided that if more than one Lender is affected at any time, then all affected Lenders must be treated the same pursuant to this Section 2.6(b).

(c) If any Lender shall have determined that after the Closing Date, the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged by law with the interpretation or administration thereof, or compliance by such Lender or its parent corporation with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank, or comparable agency, in each case made subsequent to the Closing Date, has or would have the effect of reducing by an amount reasonably deemed by such Lender to be material the rate of return on such Lender's or its parent corporation's capital or assets as a consequence of such Lender's commitments or obligations hereunder to a level below that which such Lender or its parent corporation could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Lender's or its parent corporation's policies with respect to capital adequacy), then from time to time, within 15 days after demand by such Lender (with a copy to the Administrative Agent), the Borrowers shall pay to such Lender such additional amount or amounts as will compensate such Lender or its parent corporation for such reduction. Each Lender, upon determining in good faith that any additional amounts will be payable pursuant to this Section 2.6(c), will give prompt written notice thereof to the Borrower Representative, which notice shall set forth, in reasonable detail, the basis of the calculation of such additional amounts, which

basis must be reasonable, although the failure to give any such notice shall not release or diminish any of the Borrowers' obligations to pay additional amounts pursuant to this Section 2.6(c) upon the subsequent receipt of such notice.

2.7 Breakage Compensation. The Borrowers shall compensate each Lender, upon its written request (which request shall set forth the detailed basis for requesting and the method of calculating such compensation), for all reasonable losses, costs, expenses and liabilities (including, without limitation, any loss, cost, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its Eurodollar Loans) which such Lender may sustain: (i) if for any reason (other than a default by such Lender or the Administrative Agent) a Borrowing of Eurodollar Loans does not occur on a date specified therefor in a Notice of Borrowing, Notice of Conversion or Notice of Continuation (whether or not withdrawn by the Borrowers or deemed withdrawn pursuant to Section 2.6(a)); (ii) if any repayment, prepayment, Conversion or Continuation of any of its Eurodollar Loans occurs on a date that is not the last day of an Interest Period applicable thereto; (iii) if any prepayment of any of its Eurodollar Loans is not made on any date specified in a notice of prepayment given by the Borrower Representative; (iv) as a result of an assignment by a Lender of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto pursuant to a request by the Borrower Representative pursuant to Section 2.8(b); or (v) as a consequence of (x) any other default by the Borrowers to repay or prepay its Eurodollar Loans when required by the terms of this Agreement or (y) an election made pursuant to Section 2.6(b). Such loss, cost, expense and liability to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the interest rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to effect a Borrowing, Conversion or Continuation, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate that such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such request within 10 days after receipt thereof.

## 2.8 Swingline Loans.

(a) Subject to and upon the terms and conditions herein set forth, the Swingline Lender agrees to make a swingline loan or swingline loans (each a "Swingline Loan" and, collectively, the "Swingline Loans") to the Borrowers as herein provided. Swingline Loans (1) may be incurred by the Borrowers at any time from the Closing Date until the Business Day which is one Business Day prior to the Facility Termination Date; provided that no more than two Swingline Loans may be outstanding at any one time; (ii) subject to Section 2.5(c) shall bear interest at the applicable Swingline Loan Rate; (iii) may be repaid or reborrowed in accordance with the provisions hereof provided that no Swingline Loan shall remain outstanding for more than 14 days; (iv) shall be in a minimum amount of \$500,000 each, and (v) shall not exceed \$20,000,000 in the aggregate principal amount at any one time (the "Swingline Committed Amount"). The Lenders other than the Swingline Lender will not participate in nor be obligated to make Swingline Loans (other than as set forth in Section 2.8(b)(ii) hereof). In addition, no Swingline Loans shall be incurred at any time if, after giving effect thereto, any Borrower would be required to prepay the Loans in accordance with Section 5.2(b).

### (b) Swingline Loan Borrowings.

(i) Notice of Borrowing and Disbursement. The Swingline Lender will make Swingline Loans available to the Borrowers on any Business Day upon request made by the Borrower Representative to the Swingline Lender not later than 12 noon (local time at its Notice Office) on the proposed day of borrowing. A notice of request for borrowing shall be made in the form of Exhibit B.

(ii) Repayment of Swingline Loans. Each Swingline Loan borrowing shall be due and payable on the Swingline Loan Maturity Date or may be converted into a Loan. The Swingline Lender may, at any time, in its sole discretion, by written notice to the Borrower Representative and the Administrative Agent, demand conversion of its Swingline Loans into a Loan, in which case the Borrowers shall be deemed to have requested a Loan comprised entirely of Base Rate Loans in the amount of such Swingline Loans; provided, however, that, in the following circumstances, any such demand shall also be deemed to have been given one Business Day prior to each of (i) the Facility Termination Date, (ii) the occurrence of any Event of Default described in Section 10.1(h), (iii) upon acceleration of the Obligations hereunder, whether on account of an Event of Default described in Section 10.1(h) or any other Event of Default, and (iv) the exercise of remedies in accordance with the provisions of Section 10.2 hereof (each such Loan made on account of any such deemed request therefor as provided herein being hereinafter referred to as "Mandatory Borrowing"). Each Lender hereby irrevocably agrees to make such Loans promptly upon any such request or deemed request on account of each Mandatory Borrowing in the amount and in the manner specified in the preceding sentence and on the same such date notwithstanding (A) the amount of Mandatory Borrowing may not comply with the minimum amount for borrowings of Loans otherwise required hereunder, (B) whether any conditions specified in Section 6.2 are then satisfied, (C) whether a Default, Event of Default or Material Adverse Effect then exists, (D) failure of any such request or deemed request for Loans to be made by the time otherwise required in Section 2.2(b), (E) the date of such Mandatory Borrowing, or (F) any reduction in the Total Commitment or termination of the Commitments immediately prior to such Mandatory Borrowing or contemporaneously therewith. In the event that any Mandatory Borrowing cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code), then each Lender hereby agrees that it shall forthwith purchase (as of the date the Mandatory Borrowing would otherwise have occurred, but adjusted for any payments received from the Borrowers on or after such date and prior to such purchase) from the Swingline Lender such participations in the outstanding Swingline Loans as shall be necessary to cause each such Lender to share in such Swingline Loans ratably based upon its respective Commitment Percentage (determined before giving effect to any termination of the Commitments pursuant to Section 10.2) provided that (A) all interest payable on the Swingline Loans shall be for the account of the Swingline Lender until the date as of which the respective participation is purchased, and (B) at the time any purchase of participations pursuant to this sentence is actually made, the purchasing Lender shall be required to pay to the Swingline Lender interest on the principal amount of such participation purchased for each day from and including the day upon which the Mandatory Borrowing would otherwise have occurred to but excluding the date of payment for such participation, at the rate equal to, if paid within two (2) Business Days of the date of the Mandatory Borrowing, the Federal Funds Effective Rate, and thereafter at a rate equal to the Base Rate. Upon any change in the Commitments of the Lenders pursuant to Section 12.4(c), it is hereby agreed that, with respect to all outstanding Swingline Loans, there shall be an automatic adjustment to the participations pursuant to this Section 2.8.

(c) Interest on Swingline Loans. Subject to the provisions of Section 2.5(c), Swingline Loans shall bear interest at a per annum rate equal to the Swingline Loan Rate. Interest on Swingline Loans shall be payable in arrears on each Swingline Loan Maturity Date.

2.9 Reserve. Notwithstanding anything to the contrary in this Agreement; the Borrowers shall maintain an Unutilized Total Commitment in an amount equal to at least the principal amount of all Indebtedness in connection with the note offerings described on Schedule 9.4 which are due to mature within six months of the applicable date.

### 3.1 Letters of Credit.

(a) Subject to and upon the terms and conditions herein set forth, a Borrower may request a Letter of Credit Issuer at any time and from time to time on or after the Closing Date and prior to the date that is 60 Business Days prior to the Facility Termination Date to issue, for the account of such Borrower or any Subsidiary Guarantor (the Borrower or any such Subsidiary Guarantor, a "Letter of Credit Obligor"), and subject to and upon the terms and conditions herein set forth, such Letter of Credit Issuer agrees to issue from time to time, irrevocable standby letters of credit denominated and payable in Dollars in such form as may be approved by such Letter of Credit Issuer (each such letter of credit (a "Letter of Credit" and collectively, the "Letters of Credit").

(b) Notwithstanding the foregoing, (i) no Letter of Credit shall be issued, and the Stated Amount of any outstanding Letter of Credit shall not be increased, if after giving effect thereto the Letter of Credit Outstandings would exceed either (x) the Letter of Credit Commitment Amount (y) when added to the aggregate principal amount of all Loans and Swingline Loans then outstanding, an amount equal to the Total Commitment at such time; (ii) each Letter of Credit shall have an expiry date (including any renewal periods) occurring not later than the earlier of (A) one year from the date of issuance thereof, and (B) 30 Business Days prior to the Facility Termination Date, in each case on terms acceptable to the applicable Letter of Credit Issuer. In addition, no Letter of Credit shall be issued or increased in amount if after giving effect thereto the Borrower would be required to prepay Loans in accordance with Section 5.2(b).

(c) Notwithstanding the foregoing, in the event a Lender Default exists, no Letter of Credit Issuer shall be required to issue any Letter of Credit unless either (i) such Letter of Credit Issuer has entered into arrangements satisfactory to it and the Borrower to eliminate such Letter of Credit Issuer's risk with respect to the participation in Letters of Credit of the Defaulting Lender or Lenders, including by cash collateralizing such Defaulting Lender's or Lenders' Commitment Percentage of the Letter of Credit Outstandings; or (ii) the issuance of such Letter of Credit, taking into account the potential failure of the Defaulting Lender or Lenders to risk participate therein, will not cause the Letter of Credit Issuer to incur aggregate credit exposure hereunder with respect to Loans, Swingline Loans and Letter of Credit Outstandings in excess of its Commitment, and the Borrower has undertaken, for the benefit of such Letter of Credit Issuer, pursuant to an instrument satisfactory in form and substance to such Letter of Credit Issuer, not to thereafter incur Loans, Swingline Loans or Letter of Credit Outstandings hereunder that would cause the Letter of Credit Issuer to incur aggregate credit exposure hereunder with respect to Loans, Swingline Loans and Letter of Credit Outstandings in excess of its Commitment.

(d) Unless otherwise agreed to by a Letter of Credit Issuer and the Borrower, the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each Letter of Credit issued hereunder.

### 3.2 Letter of Credit Requests: Notices of Issuance.

(a) Whenever it desires that a Letter of Credit be issued, the Borrowers shall give the Administrative Agent and the Letter of Credit Issuer written or telephonic notice (in the case of telephonic notice, promptly confirmed in writing if so requested by the Administrative Agent) which, if in the form of written notice shall be in form satisfactory to the Letter of Credit Issuer or transmit by electronic communication (if arrangements for doing so have been approved by the Letter of Credit Issuer), prior to 12:00 noon (local time at the Notice Office) at least three Business Days (or such shorter period as may be acceptable to the relevant Letter of Credit Issuer) prior to the proposed date of issuance (which shall be a Business Day) (each a "Letter of Credit Request"), which Letter of Credit Request shall include such supporting documents that such Letter of Credit Issuer customarily requires in connection therewith (including, in the case of a Letter of Credit for an account party other than a Borrower, an application for, and if applicable a reimbursement agreement with respect to, such Letter of Credit). Any such documents executed in connection with the issuance of a Letter of Credit, including the Letter of Credit itself, are herein referred to as "Letter of Credit Documents." In the event of any inconsistency between any of the terms or provisions of any Letter of Credit Document and the terms and provisions of this Agreement respecting Letters of Credit, the terms and provisions of this Agreement shall control. The Administrative Agent shall promptly notify each Lender of each Letter of Credit Request.

(b) Each Letter of Credit Issuer shall, on the date of each issuance of a Letter of Credit by it, give the Administrative Agent, each applicable Lender and the Borrower Representative written notice of the issuance of such Letter of Credit, accompanied by a copy to the Administrative Agent of the Letter of Credit or Letters of Credit issued by it. Each Letter of Credit Issuer shall provide to the Administrative Agent a quarterly (or monthly if requested by any applicable Lender) summary describing each Letter of Credit issued by such Letter of Credit Issuer and then outstanding and an identification for the relevant period of the daily aggregate Letter of Credit Outstandings represented by Letters of Credit issued by such Letter of Credit Issuer.

### 3.3 Agreement to Repay Letter of Credit Drawings.

(a) The Borrowers hereby jointly and severally agree to reimburse (or cause any Letter of Credit Obligor for whose account a Letter of Credit was issued to reimburse) each Letter of Credit Issuer, by making payment directly to such Letter of Credit Issuer in immediately available funds at the payment office of such Letter of Credit Issuer, for any payment or disbursement made by such Letter of Credit Issuer under any Letter of Credit (each such amount so paid or disbursed until reimbursed, an "Unpaid Drawing") immediately after, and in any event on the date on which, such Letter of Credit Issuer notifies the Borrower Representative (or any such other Letter of Credit Obligor for whose account such Letter of Credit was issued) of such payment or disbursement (which notice to the Borrower Representative (or such other Letter of Credit Obligor) shall be delivered reasonably promptly after any such payment or disbursement), such payment to be made in Dollars, with interest on the amount so paid or disbursed by such Letter of Credit Issuer, to the extent not reimbursed prior to 1:00 P.M. (local time at the payment office of the Letter of Credit Issuer) on the date of such payment or disbursement, from and including the date paid or disbursed to but not including the date such Letter of Credit Issuer is reimbursed therefor at a rate per annum that shall be the rate then applicable to Loans that are Base Rate Loans (plus an additional 2% per annum as described in Section 2.5(c) if not reimbursed on the date of such payment or disbursement), any such interest also to be payable on demand. If by 11:00 A.M. on the Business Day immediately following notice to it of its obligation to make reimbursement in respect of an Unpaid Drawing, the Borrowers have not made such reimbursement out of its available cash on hand or a contemporaneous Borrowing hereunder, (x) the Borrowers will be deemed to have given a Notice of Borrowing for Base Rate Loans in an aggregate principal amount sufficient to reimburse such Unpaid Drawing (and the Administrative Agent shall promptly give notice to the Lenders of such deemed Notice of Borrowing), (y) the Lenders shall, unless they are legally prohibited from doing so, make the Loans contemplated by such deemed Notice of Borrowing (which Loans shall be considered made under Section 2.1 hereof), and (z) the proceeds of such Base Rate Loans shall be disbursed directly to the applicable Letter of Credit Issuer to the extent necessary to effect such reimbursement, with any excess proceeds to be made available to the Borrowers in accordance with the applicable provisions of this Agreement.

(b) The Borrowers' obligation under this Section 3.3 to reimburse, or cause another Letter of Credit Obligor to reimburse, each Letter of Credit Issuer with respect to Unpaid Drawings (including, in each case, interest thereon) shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower or any other Letter of Credit Obligor may have or have had against such Letter of Credit Issuer, the Administrative Agent, any other Letter of Credit Issuer or any Lender, including, without

limitation, any defense based upon the failure of any drawing under a Letter of Credit to conform to the terms of the Letter of Credit or any non-application or misapplication by the beneficiary of the proceeds of such drawing; provided, however, that the Borrowers shall not be obligated to reimburse, or cause another Letter of Credit Obligor to reimburse, a Letter of Credit Issuer for any wrongful payment made by such Letter of Credit Issuer under a Letter of Credit as a result of acts or omissions constituting willful misconduct or gross negligence on the part of such Letter of Credit Issuer.

#### 3.4 Letter of Credit Participations.

(a) Immediately upon the issuance by a Letter of Credit Issuer of any Letter of Credit, such Letter of Credit Issuer shall be deemed to have sold and transferred to each Lender, and each such Lender (each a "Participant") shall be deemed irrevocably and unconditionally to have purchased and received from such Letter of Credit Issuer, without recourse or warranty, an undivided interest and participation, to the extent of such Lender's Commitment Percentage, in such Letter of Credit, each substitute letter of credit, each drawing made thereunder, the obligations of the Borrowers under this Agreement with respect thereto (although Letter of Credit Fees shall be payable directly to the Administrative Agent for the account of the Lenders as provided in Section 4.1(b) and the Participants shall have no right to receive any portion of any fees of the nature contemplated by Section 4.1(c)), the obligations of any Letter of Credit Obligor under any Letter of Credit Documents pertaining thereto, and any security for, or guaranty pertaining to, any of the foregoing. Upon any change in the Commitments of the Lenders pursuant to Section 12.4(c), it is hereby agreed that, with respect to all outstanding Letters of Credit and Unpaid Drawings, there shall be an automatic adjustment to the participations pursuant to this Section 3.4 to reflect the new Commitment Percentages of the assigning and assignee Lender.

(b) In determining whether to pay under any Letter of Credit, a Letter of Credit Issuer shall not have any obligation relative to the Participants other than to determine that any documents required to be delivered under such Letter of Credit have been delivered and that they appear to comply on their face with the requirements of such Letter of Credit. Any action taken or omitted to be taken by a Letter of Credit Issuer under or in connection with any Letter of Credit if taken or omitted in the absence of gross negligence or willful misconduct, shall not create for such Letter of Credit Issuer any resulting liability.

(c) In the event that a Letter of Credit Issuer makes any payment under any Letter of Credit and the Borrowers shall not have reimbursed (or caused any applicable Letter of Credit Obligor to reimburse) such amount in full to such Letter of Credit Issuer pursuant to Section 3.3(a), such Letter of Credit Issuer shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify each Participant of such failure, and each Participant shall promptly and unconditionally pay to the Administrative Agent for the account of such Letter of Credit Issuer, the amount of such Participant's Commitment Percentage of such payment in Dollars and in same day funds; provided, however, that no Participant shall be obligated to pay to the Administrative Agent its Commitment Percentage of such unreimbursed amount for any wrongful payment made by such Letter of Credit Issuer under a Letter of Credit as a result of acts or omissions constituting willful misconduct or gross negligence on the part of such Letter of Credit Issuer. If the Administrative Agent so notifies any Participant required to fund a payment under a Letter of Credit prior to 11:00 A.M. (local time at its Notice Office) on any Business Day, such Participant shall make available to the Administrative Agent for the account of the relevant Letter of Credit Issuer such Participant's Commitment Percentage of the amount of such payment on such Business Day in same day funds. If and to the extent such Participant shall not have so made its Commitment Percentage of the amount of such payment available to the Administrative Agent for the account of the relevant Letter of Credit Issuer, such Participant agrees to pay to the Administrative Agent for the account of such Letter of Credit Issuer, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent for the account of such Letter of Credit Issuer at the Federal Funds Effective Rate. The failure of any Participant to make available to the Administrative Agent for the account of the relevant Letter of Credit Issuer its Commitment Percentage of any payment under any Letter of Credit shall not relieve any other Participant of its obligation hereunder to make available to the Administrative Agent for the account of such Letter of Credit Issuer its Commitment Percentage of any payment under any Letter of Credit on the date required, as specified above, but no Participant shall be responsible for the failure of any other Participant to make available to the Administrative Agent for the account of such Letter of Credit Issuer such other Participant's Commitment Percentage of any such payment.

(d) Whenever a Letter of Credit Issuer receives a payment of a reimbursement obligation as to which the Administrative Agent has received for the account of such Letter of Credit Issuer any payments from the Participants pursuant to Section 3.4(c) above, such Letter of Credit Issuer shall pay to the Administrative Agent and the Administrative Agent shall promptly pay to each Participant that has paid its Commitment Percentage thereof, in Dollars and in same day funds, an amount equal to such Participant's Commitment Percentage of the principal amount thereof and interest thereon accruing after the purchase of the respective participations, as and to the extent so received.

(e) The obligations of the Participants to make payments to the Administrative Agent for the account of each Letter of Credit Issuer with respect to Letters of Credit shall be irrevocable and not subject to counterclaim, set-off or other defense or any other qualification or exception whatsoever and shall be made in accordance with the terms and conditions of this Agreement under all circumstances, including, without limitation, any of the following circumstances:

(i) any lack of validity or enforceability of this Agreement or any of the other Credit Documents;

(ii) the existence of any claim, set-off defense or other right that the Borrowers (or any other Letter of Credit Obligor) may have at any time against a beneficiary named in a Letter of Credit, any transferee of any Letter of Credit (or any person for whom any such transferee may be acting), the Administrative Agent, any Letter of Credit Issuer, any Lender, or other person, whether in connection with this Agreement, any Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transaction between any Borrower (or any other Letter of Credit Obligor) and the beneficiary named in any such Letter of Credit), other than any claim that the Borrower (or any other Letter of Credit Obligor) that is the account party with respect to a Letter of Credit) may have against any applicable Letter of Credit Issuer for gross negligence or willful misconduct of such Letter of Credit Issuer in making payment under any applicable Letter of Credit;

(iii) any draft, certificate or other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(iv) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Credit Documents: or

(v) the occurrence of any Default or Event of Default.

(f) To the extent the Letter of Credit Issuer is not reimbursed by the Borrowers, the Participants will reimburse the Letter of Credit Issuer, in proportion to their respective Commitment Percentages, for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature that may be imposed on, asserted against or incurred by the Letter of Credit Issuer in performing its respective duties in any way related to or arising out of its issuance of Letters of Credit, provided that

no Participants shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements resulting from the Letter of Credit Issuer's acts or omissions constituting gross negligence or willful misconduct.

3.5 Increased Costs. If after the Closing Date, the adoption of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Letter of Credit Issuer or any Lender with any request or directive (whether or not having the force of law) by any such authority, central bank or comparable agency (in each case made subsequent to the Closing Date) shall either (i) impose, modify or make applicable any reserve, deposit, capital adequacy or similar requirement against Letters of Credit issued by such Letter of Credit Issuer or such Lender's participation therein, or (ii) shall impose on such Letter of Credit Issuer or any Lender any other conditions affecting this Agreement, any Letter of Credit or such Lender's participation therein; and the result of any of the foregoing is to increase the cost to such Letter of Credit Issuer or such Lender of issuing, maintaining or participating in any Letter of Credit, or to reduce the amount of any sum received or receivable by such Letter of Credit Issuer or such Lender hereunder (other than any increased cost or reduction in the amount received or receivable resulting from the imposition of or a change in the rate of taxes or similar charges), then, upon demand to the Borrowers by such Letter of Credit Issuer or such Lender (a copy of which notice shall be sent by such Letter of Credit Issuer or such Lender to the Administrative Agent), the Borrower shall pay to such Letter of Credit Issuer or such Lender such additional amount or amounts as will compensate any such Letter of Credit Issuer or such Lender for such increased cost or reduction. A certificate submitted to the Borrowers by any Letter of Credit Issuer or any Lender, as the case may be (a copy of which certificate shall be sent by such Letter of Credit Issuer or such Lender to the Administrative Agent), setting forth, in reasonable detail, the basis for the determination of such additional amount or amounts necessary to compensate any Letter of Credit Issuer or such Lender as aforesaid shall be conclusive and binding on the Borrower absent manifest error, although the failure to deliver any such certificate shall not release or diminish any of the Borrowers' obligations to pay additional amounts pursuant to this Section 3.5.

3.6 Guaranty of Letter of Credit Obligations of Other Letter of Credit Obligors.

(a) The Borrowers hereby unconditionally jointly and severally guarantee, for the benefit of the Administrative Agent, each Letter of Credit Issuer and the Lenders, the full and punctual payment of the Obligations of each other Letter of Credit Obligor under each Letter of Credit Document to which such other Letter of Credit Obligor is now or hereafter becomes a party. Upon failure by any such other Letter of Credit Obligor to pay punctually any such amount, the Borrowers shall forthwith on demand by the Administrative Agent pay the amount not so paid at the place and in the currency and otherwise in the manner specified in this Agreement or any applicable Letter of Credit Document.

(b) As a separate, additional and continuing obligation, the Borrowers unconditionally and irrevocably undertake and agree, for the benefit of the Administrative Agent and the Lenders, that, should any amounts not be recoverable from the Borrowers under Section 3.6(a) for any reason whatsoever (including, without limitation, by reason of any provision of any Credit Document or any other agreement or instrument executed in connection therewith being or becoming void, unenforceable, or otherwise invalid under any applicable law) then, notwithstanding any notice or knowledge thereof by any Lender, the Administrative Agent, any of their respective Affiliates, or any other person, at any time, the Borrowers as sole, original and independent obligor, upon demand by the Administrative Agent, will make payment to the Administrative Agent, for the account of the Lenders and the Administrative Agent, of all such obligations not so recoverable by way of full indemnity, in such currency and otherwise in such manner as is provided in the Credit Documents.

(c) The obligations of the Borrowers under this Section shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by the occurrence, one or more times, of any of the following:

(i) any extension, renewal, settlement, compromise, waiver or release in respect to any obligation of any other Letter of Credit Obligor under any Letter of Credit Document, by operation of law or otherwise;

(ii) any modification or amendment of or supplement to this Agreement, any Note or any other Credit Document;

(iii) any release, non-perfection or invalidity of any direct or indirect security for any obligation of the Borrowers under this Agreement, any Note or any other Credit Document or of any other Letter of Credit Obligor under any Letter of Credit Document;

(iv) any change in the corporate existence, structure or ownership of any other Letter of Credit Obligor or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any other Letter of Credit Obligor or its assets or any resulting release or discharge of any obligation of any other Letter of Credit Obligor contained in any Letter of Credit Document;

(v) the existence of any claim, set-off or other rights that the Borrower may have at any time against any other Letter of Credit Obligor, the Administrative Agent, any Letter of Credit Issuer any Lender or any other person, whether in connection herewith or any unrelated transactions;

(vi) any invalidity or unenforceability relating to or against any other Letter of Credit Obligor for any reason of any Letter of Credit Document, or any provision of applicable law or regulation purporting to prohibit the payment by any other Letter of Credit Obligor of any Obligations in respect of any Letter of Credit; or

(vii) any other act or omission to act or delay of any kind by any other Letter of Credit Obligor, the Administrative Agent, any Lender or any other person or any other circumstance whatsoever that might, but for the provisions of this Section, constitute a legal or equitable discharge of the Borrowers' obligations under this Section.

(d) The Borrowers' obligations under this Section shall remain in full force and effect until the Commitments shall have terminated and all of the Obligations shall have been paid in full. If at any time any payment of any of the Obligations of any other Letter of Credit Obligor in respect of any Letter of Credit Documents is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of such other Letter of Credit Obligor, the Borrowers' obligations under this Section with respect to such payment shall be reinstated at such time as though such payment had been due but not made at such time.

(e) The Borrowers irrevocably waive acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any person against any other Letter of Credit Obligor or any other person, or against any collateral or guaranty of any other person.

(f) Until the indefeasible payment in full of all of the Obligations and the termination of the Commitments of the Lenders hereunder, the Borrowers shall have no rights, by operation of law or otherwise, upon making any payment under this Section to be subrogated to the rights of the payee against any other Letter of Credit Obligor with respect to such payment or otherwise to be reimbursed, indemnified or exonerated by any other Letter of Credit Obligor in respect thereof.

(g) In the event that acceleration of the time for payment of any amount payable by any other Letter of Credit Obligor under any Letter of Credit Document is stayed upon insolvency, bankruptcy or reorganization of such other Letter of Credit Obligor, all such amounts otherwise subject to acceleration under the terms of any applicable Letter of Credit Document shall nonetheless be payable by the Borrower under this Section forthwith on demand by the Administrative Agent.

#### ARTICLE IV. FEES; COMMITMENTS

##### 4.1 Fees.

(a) Facility Fees. The Borrowers agree to pay to the Administrative Agent a facility fee ("Facility Fee") for the account of each then Non-Defaulting Lender for the period from the Closing Date to the Facility Termination Date or, if earlier, the date upon which the Total Commitment has been terminated pursuant to Section 4.2 or 4.3, computed for each day at a rate per annum equal to the Applicable Facility Fee Rate in effect for such day on the amount of such Lender's Commitment for such day. Facility Fees shall be due and payable in arrears on the last Business Day of each March, June, September and December and on the Facility Termination Date.

(b) Letter of Credit Fees. The Borrowers agree to pay to the Administrative Agent, for the account of each then Non-Defaulting Lender, *pro rata* on the basis of its Commitment Percentage, a fee in respect of each Letter of Credit (the "Letter of Credit Fee"), computed at a rate per annum equal to the Applicable Margin then in effect for Eurodollar Loans, on the Stated Amount thereof for the period from the date of issuance (or increase, renewal or extension) to the expiration date thereof (including any extensions of such expiration date that may be made at the election of the account party or beneficiary). The Borrowers also agree to pay additional Letter of Credit Fees, on demand, at the rate of 2% per annum, on the Stated Amount of each Letter of Credit, for any period when a Default under Section 10.1(a) or Event of Default has occurred and is continuing. Accrued Letter of Credit Fees shall be due and payable in arrears on the last Business Day of each March, June, September and December and on the Facility Termination Date.

(c) Fronting Fees. The Borrowers agree to pay directly to each Letter of Credit Issuer, for its own account, a fee in respect of each Letter of Credit issued by it (a "Fronting Fee") computed at the rate of 1/8 of 1% per annum on the Stated Amount thereof for the period from the date of issuance (or increase, renewal or extension) to the expiration date thereof (including any extensions of such expiration date that may be made at the election of the beneficiary thereof). Accrued Fronting Fees shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December and on the Facility Termination Date.

(d) Additional Charges of Letter of Credit Issuer. The Borrowers agree to pay directly to each Letter of Credit Issuer upon each issuance of, drawing under, or amendment, extension, renewal or transfer of, a Letter of Credit issued by it such amount as shall at the time of such issuance, drawing, amendment, extension, renewal or transfer be the administrative or processing charge that such Letter of Credit Issuer is customarily charging for issuances of, drawings under or amendments, extensions, renewals or transfers of, letters of credit issued by it.

(e) Other Fees. The Borrowers shall pay to the Administrative Agent, on the Closing Date and thereafter, such fees as heretofore agreed by the Borrowers and the Administrative Agent or the Lenders as set forth in any agent fee letter, closing fee letter or similar agreement.

(f) Computations of Fees. All computations of Facility Fees, Letter of Credit Fees and other Fees hereunder shall be made on the actual number of days elapsed over a year of 360 days.

4.2 Voluntary Termination/Reduction of Commitments. Upon at least three Business Days' prior irrevocable written notice (or telephonic notice confirmed in writing) to the Administrative Agent at its Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders), the Borrowers shall have the right to:

(a) terminate in whole the Total Commitment, provided that (i) all outstanding Loans are contemporaneously prepaid in accordance with Section 5.1, and (ii) either (A) no Letters of Credit remain outstanding, or (B) the Borrowers shall contemporaneously either (x) cause all outstanding Letters of Credit to be surrendered for cancellation (any such Letters of Credit to be replaced by letters of credit issued by other financial institutions acceptable to each Letter of Credit Issuer and the Required Lenders), or (y) the Borrowers shall pay to the Administrative Agent an amount in cash and/or Cash Equivalents equal to 100% of the Letter of Credit Outstandings and the Administrative Agent shall hold such payment as security for the reimbursement obligations of the Borrowers hereunder in respect of Letters of Credit pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Administrative Agent, each Letter of Credit Issuer and the Borrowers (which shall permit certain investments in Cash Equivalents satisfactory to the Administrative Agent, each Letter of Credit Issuer and the Borrowers until the proceeds are applied to the secured obligations); or

(b) partially and permanently reduce the Unutilized Total Commitment, provided that (i) any such reduction shall apply to proportionately and permanently reduce the Commitment of each of the Lenders and (ii) any partial reduction of the Unutilized Total Commitment pursuant to this Section 4.2(b) shall be in the amount of at least \$10,000,000 (or, if greater, in integral multiples of \$1,000,000).

##### 4.3 Mandatory Adjustments of Commitments, etc.

(a) The Total Commitment (and the Commitment of each Lender) shall terminate on the Facility Termination Date.

(b) The Total Commitment shall be permanently reduced, without premium or penalty, at the time that any mandatory prepayment of Loans are required to be made pursuant to Section 5.2 (b) in an amount equal to the required prepayment of principal of Loans that would be required to be made in such circumstance (whether or not any Loans or Swingline Loans are outstanding or any Letter of Credit Outstandings exist). Any such reduction shall apply to proportionately and permanently reduce the Commitment of each of the affected Lenders. The Borrower Representative will provide at least three Business Days' prior written notice (or telephonic notice promptly confirmed in writing) to the Administrative Agent at its Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders), of any reduction of the Total Commitment pursuant to this Section 4.3(b), specifying the date and amount of the reduction.

##### 4.4 Increase in Total Commitment.

(a) At any time upon written notice to the Administrative Agent, Borrowers may request that the Total Commitment be increased by an amount not to exceed \$50,000,000 in the aggregate for all such increases from the Closing Date until the Facility Termination Date, provided that (A) no Default or Event of Default has occurred and is continuing at the time of such request and on the date of any such increase and (B) Borrowers shall have delivered to the Administrative Agent, together with such written notice, a copy of Borrowers' duly adopted corporate resolutions, in form and substance satisfactory to The Administrative Agent, that authorize the requested increase in the Total Commitment, which resolutions shall be certified by the Secretaries of each Borrower as being true, correct, complete and in full force and effect. Upon receipt of any such request, the Administrative Agent shall deliver a copy of such request to each Lender. Borrowers shall set forth in such request the amount of

the requested increase in the Total Commitment (which in each case shall be in a minimum amount equal to the lesser of Ten Million Dollars (\$10,000,000) or the remaining amount of the increased Total Commitment) and the date on which such increase is requested to become effective (which shall be not less than 10 Business Days nor more than sixty (60) days after the date of such request and that, in any event, must be at least ninety (90) days prior to the Facility Termination Date), and shall offer each Lender the opportunity to increase its Commitment. Each Lender shall, by notice to Borrowers and the Administrative Agent given not more than ten (10) days after the date of the Administrative Agent's notice, either agree to increase its Commitment by all or a portion of the offered amount (each such Lender so agreeing being an "Increasing Lender") or decline to increase its Commitment (and any such Lender that does not deliver such a notice within such period of 10 days shall be deemed to have declined to increase its Commitment and each Lender so declining or being deemed to have declined being a "Non-Increasing Lender"). If, on the 10th day after the Administrative Agent shall have delivered notice as set forth above, the Increasing Lenders shall have agreed pursuant to the preceding sentence to increase their Commitments by an aggregate amount less than the increase in the Total Commitment Amount requested by Borrowers, Borrowers may arrange for one or more Lenders or other entities that are reasonably acceptable to the Administrative Agent (each such Person so agreeing being an "Augmenting Lender") so long as such Augmenting Lender shall have a Commitment of not less than Ten Million Dollars (\$10,000,000), and Borrowers and each Augmenting Lender shall execute all such documentation as Administrative Agent shall reasonably specify to evidence its Commitment and/or its status as a Lender with a Commitment hereunder. Any increase in the Total Commitment may be made in an amount that is less than the increase requested by Borrowers if Borrowers are unable to arrange for, or chooses not to arrange for, Augmenting Lenders, in the full amount. If Increasing Lenders and/or Augmenting Lenders offer Commitment increases or new Commitments, as the case may be, in excess of the aggregate increase amount requested by Borrowers, then the Administrative Agent shall, in consultation with Borrowers, determine each such Increasing Lender's or Augmenting Lender's percentage of the increased amount.

(b) Each of the parties hereto agrees that the Administrative Agent may, in consultation with Borrowers, take any and all actions as may be reasonably necessary to ensure that after giving effect to any increase in the Total Commitment pursuant to this Section, the outstanding Loans (if any) are held by the Lenders with Commitments in accordance with their new Commitment Percentages. This may be accomplished at the discretion of the Administrative Agent: (i) by requiring the outstanding Loans to be prepaid with the proceeds of new Loans; (ii) by causing the Non-Increasing Lenders to assign portions of their outstanding Loans to Increasing Lenders and Augmenting Lenders; (iii) by permitting the Loans outstanding at the time of any increase in the Total Commitment pursuant to this Section 2.06(b) to remain outstanding until the last days of the respective Interest Periods, therefor, even though the Lenders would hold such Loans other than in accordance with their new Commitment Percentages; or (iv) by any combination of the foregoing.

#### ARTICLE V. PAYMENTS

5.1 Voluntary Prepayments. The Borrowers shall have the right to prepay any of the Loans, in whole or in part, without premium or penalty (except as specified below), from time to time on the following terms and conditions:

(a) the Borrower Representative shall give the Administrative Agent at the Notice Office written or telephonic notice (in the case of telephonic notice, promptly confirmed in writing if so requested by the Administrative Agent) of its intent to prepay the Loans, the amount of such prepayment and (in the case of Eurodollar Loans) the specific Borrowing(s) pursuant to which made, which notice shall be received by the Administrative Agent by (i) 12:00 noon (local time at the Notice Office) three Business Days prior to the date of such prepayment, in the case of any prepayment of Eurodollar Loans, or (ii) 12:00 noon (local time at the Notice Office) one Business Day prior to the date of such prepayment, in the case of any prepayment of Base Rate Loans, and which notice shall promptly be transmitted by the Administrative Agent to each of the Lenders;

(b) in the case of prepayment of any Borrowings, each partial prepayment of any such Borrowing shall be in an aggregate principal amount of at least \$500,000;

(c) no partial prepayment of any Loans made pursuant to a Borrowing shall reduce the aggregate principal amount of such Loans outstanding pursuant to such Borrowing to an amount less than the Minimum Borrowing Amount applicable thereto, provided that the foregoing limitation shall not apply if such Loans are being prepaid in full;

(d) each prepayment in respect of any Loans made pursuant to a Borrowing shall be applied to the Loans designated by the Borrower; and

(e) each prepayment of Eurodollar Loans pursuant to this Section 5.1 on any date other than the last day of the Interest Period applicable thereto shall be accompanied by any amounts payable in respect thereof under Section 2.7.

5.2 Mandatory Prepayments. The Loans and the Swingline Loans shall be subject to mandatory repayment or prepayment, and the Letter of Credit Outstandings shall be subject to cash collateralization requirements, in accordance with the following provisions:

(a) Facility Termination Date. The Borrowers shall repay the entire principal amount outstanding of any Loans and Swingline Loans on the Facility Termination Date and, if any Letter of Credit Outstandings exist, then on such date the Borrowers shall cause each Letter of Credit to be replaced or cash collateralized in accordance with the provisions of Section 5.2(c).

(b) Mandatory Prepayment--Certain Proceeds of an Event of Loss. If during any fiscal year of the Borrowers, the Borrowers and their Subsidiaries have received cumulative Cash Proceeds during such fiscal year from one or more Events of Loss of more than 5% of the Borrowers' Consolidated Net Worth, not later than the third Business Day following the date of receipt of any Cash Proceeds in excess of such amount, an amount, conforming to the requirements as to the amount of partial prepayments contained in Section 5.1, at least equal to 100% of the Cash Proceeds then received in excess of such amount from any Event of Loss (less the amount of any insurance proceeds which are used by the Borrowers to rebuild, repair or reconstruct the property destroyed or damaged) shall be applied on a pari passu basis as a mandatory prepayment of principal of the outstanding Loans, and the outstanding obligations of Gibraltar Steel Corporation of New York in connection with the Secured Notes as defined in paragraph (c) of Schedule 9.4.

(c) Mandatory Prepayment--Loans Exceed Total Commitment. If on any date (after giving effect to any other payments on such date) the sum of (i) the aggregate outstanding principal amount of Loans plus (ii) the aggregate outstanding principal amount of Swingline Loans plus (iii) the aggregate amount of Letter of Credit Outstandings, exceeds the Total Commitment as then in effect, then the Borrowers shall prepay on such date that principal amount of Loans and Swingline Loans and, after Loans and Swingline Loans have been paid in full, Unpaid Drawings, in an aggregate amount at least equal to such excess and conforming in the case of partial prepayments of Loans to the requirements as to the amounts of partial prepayments of Loans that are contained in Section 5.1. If at any time the aggregate amount of Letter of Credit Outstandings exceeds the Total Commitment as then in effect, or if at any time the aggregate amount of Letter of Credit Outstandings (or any particular Letter of Credit or grouping of Letters of Credit) exceeds the Letter of Credit Commitment Amount, then the Borrowers shall pay to the Administrative Agent an amount in cash and/or Cash Equivalents equal to such excess and the Administrative Agent shall hold such payment as security for the reimbursement obligations of the Borrowers and any other Credit Parties hereunder in respect of Letters of Credit pursuant to a cash collateral

agreement to be entered into in form and substance reasonably satisfactory to the Administrative Agent, the Required Lenders, each Letter of Credit Issuer and the Borrowers (which shall permit certain investments in Cash Equivalents satisfactory to the Administrative Agent, each Letter of Credit Issuer and the Borrowers until the proceeds are applied to the secured obligations).

(d) Particular Loans to be Prepaid. With respect to each repayment or prepayment of Loans required by this Section 5.2, the Borrower Representative shall designate the Types of Loans that are to be repaid or prepaid and the specific Borrowing(s) pursuant to which such repayment or prepayment is to be made, provided that (i) the Borrowers shall first so designate all Loans that are Base Rate Loans and Eurodollar Loans with Interest Periods ending on the date of repayment or prepayment prior to designating any other Eurodollar Loans for repayment or prepayment, (ii) if the outstanding principal amount of Eurodollar Loans made pursuant to a Borrowing is reduced below the applicable Minimum Borrowing Amount as a result of any such repayment or prepayment, then all the Loans outstanding pursuant to such Borrowing shall be Converted into Base Rate Loans, and (iii) each repayment and prepayment of any Loans made pursuant to a Borrowing shall be applied *pro rata* among such Loans. In the absence of a designation by the Borrower Representative as described in the preceding sentence, the Administrative Agent shall, subject to the above, make such designation in its sole discretion with a view, but no obligation, to minimize breakage costs owing under Section 2.7. Any repayment or prepayment of Eurodollar Loans pursuant to this Section 5.2 shall in all events be accompanied by such compensation as is required by Section 2.7.

### 5.3 Method and Place of Payment.

(a) Except as otherwise specifically provided herein, all payments under this Agreement shall be made to the Administrative Agent for the ratable (based on its *pro rata* share) account of the Lenders entitled thereto, not later than 12:00 noon (local time at the Payment Office) on the date when due and shall be made at the Payment Office in immediately available funds and in lawful money of the United States of America, it being understood that written notice by the Borrower Representative to the Administrative Agent to make a payment from the funds in the Borrower Representative's account at the Payment Office shall constitute the making of such payment to the extent of such funds held in such account. Any payments under this Agreement that are made later than 12:00 noon (local time at the Payment Office) shall be deemed to have been made on the next succeeding Business Day. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable during such extension at the applicable rate in effect immediately prior to such extension.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, Unpaid Drawings, interest and Fees then due hereunder and an Event of Default is not then in existence, such funds shall be applied (i) first, towards payment of interest and Fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and Fees then due to such parties, and (ii) second, towards payment of principal and Unpaid Drawings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and Unpaid Drawings then due to such parties.

### 5.4 Net Payments.

(a) All payments made by the Borrowers hereunder, under any Note or any other Credit Document, shall be made without setoff, counterclaim or other defense. Except as provided for in Section 5.4(b), all such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments (but excluding, except as provided in the second succeeding sentence, any tax, imposed on or measured by the net income or net profits of a Lender pursuant to the laws of the jurisdiction under which such Lender is organized or the jurisdiction in which the principal office or Applicable Lending Office of such Lender is located or any subdivision thereof or therein) and all interest, penalties or similar liabilities with respect to such non-excluded taxes, levies imposts, duties, fees, assessments or other charges (all such non-excluded taxes, levies, imposts, duties, fees assessments or other charges being referred to collectively as "Taxes"). If any Taxes are so levied or imposed, the Borrowers agree to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment by it of all amounts due hereunder, under any Note or under any other Credit Document, after withholding or deduction for or on account of any Taxes will not be less than the amount provided for herein or in such Note or in such other Credit Document. If any amounts are payable in respect of Taxes pursuant to the preceding sentence, the Borrowers agree to reimburse each Lender, upon the written request of such Lender for taxes imposed on or measured by the net income or profits of such Lender pursuant to the laws of the jurisdiction in which such Lender is organized or in which the principal office or Applicable Lending Office of such Lender is located or under the laws of any political subdivision or taxing authority of any such jurisdiction in which the principal office or Applicable Lending Office of such Lender is located and for any withholding of income or similar taxes imposed by the United States of America as such Lender shall determine are payable by, or withheld from, such Lender in respect of such amounts so paid to or on behalf of such Lender pursuant to the preceding sentence and in respect of any amounts paid to or on behalf of such Lender pursuant to this sentence, which request shall be accompanied by a statement from such Lender setting forth, in reasonable detail, the computations used in determining such amounts. The Borrowers will furnish to the Administrative Agent, and the Administrative Agent will furnish to the applicable Lender, within 45 days after the date the payment of any Taxes, or any withholding or deduction on account thereof, is due pursuant to applicable law certified copies of tax receipts, or other evidence satisfactory to the Lender, evidencing such payment by the Borrowers. The Borrowers will indemnify and hold harmless the Administrative Agent and each Lender, and reimburse the Administrative Agent or such Lender upon its written request, for the amount of any Taxes so levied or imposed and paid or withheld by such Lender.

(b) Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) for Federal income tax purposes agrees to provide to the Borrower Representative and the Administrative Agent on or prior to the Closing Date, or in the cases of a Lender that is an assignee or transferee of an interest under this Agreement pursuant to Section 12.4 (unless the respective Lender was already a Lender hereunder immediately prior to such assignment or transfer and such Lender is in compliance with the provisions of this Section 5.4(b)), on the date of such assignment or transfer to such Lender, and from time to time thereafter if required by the Borrower Representative or the Administrative Agent: (i) two accurate and complete original signed copies of Internal Revenue Service Form 1001, 4224, W-8BEN, W-8ECI, W-8EXP or W-8IMY (or successor, substitute or other appropriate forms) certifying to such Lender's entitlement to a complete exemption from, or a reduced rate of withholding from, United States withholding tax with respect to payments to be made under this Agreement, any Note or any other Credit Document, or (ii) if the Lender cannot deliver the appropriate Internal Revenue Service Forms referred to in clause (i) above, (x) a certificate in form and substance satisfactory to the Administrative Agent (any such certificate, an "Exemption Certificate") and (y) other appropriate documentation certifying to such Lender's entitlement to a complete exemption from, or reduced rate of withholding from, United States withholding tax with respect to payments of interest to be made under this Agreement, any Note or any other Credit Document. In addition, each Lender agrees that from time to time after the Closing Date, when a lapse in time or change in circumstances renders the previous certification obsolete or inaccurate in any material respect, it will deliver to the Borrower and the Administrative Agent two new accurate and complete original signed copies of the applicable Internal Revenue Service Form, or an Exemption Certificate and related documentation, as the case may be, and such other forms as may be required in order to confirm or establish the entitlement of such Lender to a continued exemption from or reduction in United States withholding tax with respect to payments under this Agreement, any Note or any other Credit Document, or it shall immediately notify the Borrower and the Administrative Agent of its inability to deliver any such Form or Exemption Certificate and related documentation, in which case such Lender shall not be required to deliver any such Form or Exemption Certificate and related documentation



pursuant to this Section 5.4(b). Notwithstanding anything to the contrary contained in Section 5.4(a), but subject to Section 12.4(c) and the immediately succeeding sentence, (x) the Borrowers shall be entitled, to the extent it is required to do so by law, to deduct or withhold income or other similar taxes imposed by the United States (or any political subdivision or taxing authority thereof or therein) from interest, fees or other amounts payable hereunder for the account of any Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) for United States federal income tax purposes and that has not provided to the Borrower Representative such Forms or such Exemption Certificate and related documentation that establish a complete exemption from or reduction in the rate of such deduction or withholding and (y) the Borrowers shall not be obligated pursuant to Section 5.4(a) hereof to gross-up payments to be made to a Lender in respect of income or similar taxes imposed by the United States or any additional amounts with respect thereto (I) if such Lender has not provided to the Borrower Representative the Internal Revenue Service forms required to be provided to the Borrower Representative pursuant to this Section 5.4(b) or (ii) in the case of a payment other than interest, to a Lender described in clause (ii) above, to the extent that such forms do not establish a complete exemption from withholding of such taxes. Notwithstanding anything to the contrary contained in Section 5.4(a), but subject to Section 12.4(c) and the immediately succeeding sentence, (x) the Borrowers shall be entitled, to the extent they are required to do so by law, to deduct or withhold income or other similar taxes imposed by the United States (or any political subdivision or taxing authority thereof or therein) from interest, fees or other amounts payable hereunder for the account of any Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) for United States federal income tax purposes and that has not provided to the Borrower Representative such forms that establish a complete exemption from such deduction or withholding and (y) the Borrowers shall not be obligated pursuant to Section 5.4(a) hereof to gross-up payments to be made to a Lender in respect of income or similar taxes imposed by the United States or any additional amounts with respect thereto (i) if such Lender has not provided to the Borrower Representative the Internal Revenue Service forms required to be provided to the Borrower Representative pursuant to this Section 5.4(b) or (ii) in the case of a payment other than interest, to a Lender described in clause (ii) above, to the extent that such forms do not establish a complete exemption from withholding of such taxes. Notwithstanding anything to the contrary contained in the preceding sentence or elsewhere in this Section 5.4 and except as specifically provided for in Section 12.4(c), the Borrowers agree to pay additional amounts and indemnify each Lender in the manner set forth in Section 5.4(a) (without regard to the identity of the jurisdiction requiring the deduction or withholding) in respect of any Taxes deducted or withheld by it as described in the previous sentence as a result of any changes after the Closing Date in any applicable law, treaty, governmental rule, regulation, guideline or order, or in the interpretation thereof, relating to the deducting or withholding of income or similar Taxes.

## ARTICLE VI. CONDITIONS PRECEDENT

6.1 Conditions Precedent at Closing Date. The obligation of the Lenders to make Loans and of the Swingline Lender to make the Swingline Loans, and of any Letter of Credit Issuer to issue Letters of Credit, is subject to the satisfaction of each of the following conditions on or prior the Closing Date:

- (a) Credit Agreement. This Agreement shall have been executed by the Borrower, the Administrative Agent, the Swingline Lender, the Letter of Credit Issuer and each of the Lenders.
- (b) Notes. The Borrowers shall have executed and delivered to the Administrative Agent a Note for the account of each Lender that has requested a Note.
- (c) Fees, etc. The Borrowers shall have paid or caused to be paid all fees required to be paid by them on the Closing Date pursuant to Section 4.1 hereof and all reasonable fees and expenses of the Administrative Agent and of special counsel to the Administrative Agent that have been invoiced on or prior to such date in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Credit Documents and the consummation of the transactions contemplated hereby and thereby.
- (d) Other Credit Documents. The Credit Parties named therein shall have duly executed and delivered and there shall be in full force and effect, (i) the Subsidiary Guaranty (as modified, amended or supplemented from time to time in accordance with the terms thereof and hereof, the "Subsidiary Guaranty"), substantially in the form attached hereto as Exhibit C-1, (ii) the Security Agreement (as modified, amended or supplemented from time to time in accordance with the terms thereof and hereof, the "Security Agreement"), substantially in the form attached hereto as Exhibit C-2, and (iii) the Pledge Security Agreement (as modified, amended or supplemented from time to time in accordance with the terms thereof and hereof, the "Pledge Agreement"), substantially in the form attached hereto as Exhibit C-3, and in each case, shall have satisfied all obligations set forth therein.
- (e) Corporate Resolutions and Approvals. The Administrative Agent shall have received certified copies of the resolutions of the Board of Directors of the Borrowers and each other Credit Party, approving the Credit Documents to which the Borrowers or any such other Credit Party, as the case may be, is or may become a party, and of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to the execution, delivery and performance by the Borrowers or any such other Credit Party of the Credit Documents to which it is or may become a party.
- (f) Incumbency Certificates. The Administrative Agent shall have received a certificate of the Secretary or an Assistant Secretary of each Borrower and of each other Credit Party, certifying the names and true signatures of the officers of such Borrower or such other Credit Party, as the case may be, authorized to sign the Credit Documents to which such Borrower or such other Credit Party is a party and any other documents to which such Borrower or any such other Credit Party is a party that may be executed and delivered in connection herewith.
- (g) Opinions of Counsel. The Administrative Agent shall have received such opinions of counsel from counsel to the Borrowers as the Administrative Agent shall request, each of which shall be addressed to the Administrative Agent and each of the Lenders and dated the Closing Date and shall be in form and substance satisfactory to the Administrative Agent.
- (h) Existing Credit Agreement. Contemporaneously with the Closing Date, the Borrowers shall have terminated the commitments of the lenders under its Existing Credit Agreement, prepaid any borrowings (including, without limitation, principal, interest and fees) thereunder and terminated or released all Liens granted in connection therewith.
- (i) Recordation of Security Documents, Delivery of Collateral, Taxes, etc. The Security Documents (or proper notices or financing statements in respect thereof) shall have been duly recorded, published and filed in such manner and in such places as is required by law to establish, perfect, preserve and protect the rights and security interests of the parties thereto and their respective successors and assigns, all collateral items required to be physically delivered to the Administrative Agent thereunder shall have been so delivered, accompanied by any appropriate instruments of transfer, and all taxes, fees and other charges then due and payable in connection with the execution, delivery, recording, publishing and filing of such instruments and the issue and delivery of the Notes shall have been paid in full.
- (j) Evidence of Insurance. The Administrative Agent shall have received certificates of insurance and other evidence, satisfactory to it, of compliance with the insurance requirements of this Agreement and the Security Documents.

(k) Search Reports. The Administrative Agent shall have received the results of UCC and other search reports from one or more commercial search firms acceptable to the Administrative Agent, listing all of the effective financing statements and other Liens filed against any Credit Party (i) in the jurisdiction in which each such Credit Party is organized or formed, (ii) in any jurisdiction in which such Credit Party maintains an office or (iii) in any jurisdiction in which any Collateral of such Credit Party is located.

(l) Corporate Charter and Good Standing Certificates. The Administrative Agent shall have received: (i) an original certified copy of the Certificate of Incorporation of each Credit Party and any and all amendments and restatements thereof, certified as of a recent date by the relevant Secretary of Borrower; (ii) an original good standing certificate from the Secretary of State of the state of incorporation, dated as of a recent date, listing all charter documents affecting such Credit Party and certifying as to the good standing of such Credit Party; and (iii) original certificates of good standing from each other jurisdiction in which each Credit Party is authorized or qualified to do business.

(m) Solvency Certificate. The Administrative Agent shall have received, in sufficient quantities for the Lenders, a duly executed solvency certificate substantially in the form attached hereto as Exhibit D-1, and such certificate shall be satisfactory in form and substance to each of the Lenders.

(n) Borrower's Closing Certificate. The Administrative Agent shall have received a certificate in the form attached hereto as Exhibit D-2, dated the Closing Date, of an Authorized Officer to the effect that, at and as of the Closing Date and both before and after giving effect to the initial Borrowings hereunder and the application of the proceeds thereof: (x) no Default or Event of Default has occurred and is continuing; (y) no Material Adverse Effect has occurred; and (z) all representations and warranties of the Credit Parties contained herein or in the other Credit Documents are true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the Closing Date, except that as to any such representations and warranties that expressly relate to an earlier specified date, such representations and warranties are only represented as having been true and correct in all material respects as of the date when made.

(o) Prudential Amendment Documents. The Administrative Agent shall have received copies of certain documents amending the Note Purchase Agreements and Subordinated Note Purchase Agreement of Gibraltar Steel Corporation of New York and indicating to the satisfaction of the Administrative Agent that such agreements do not contain terms or covenants that are more restrictive than the terms and covenants contained in this Agreement.

(p) Proceedings and Documents. All corporate and other proceedings and all documents incidental to the transactions contemplated hereby shall be satisfactory in substance and form to the Administrative Agent and the Lenders and the Administrative Agent and its special counsel and the Lenders shall have received all such counterpart originals or certified or other copies of such documents as the Administrative Agent or its special counsel or any Lender may reasonably request.

6.2 Conditions Precedent to All Credit Events. The obligation of the Lenders to make or participate in each Credit Event is subject, at the time thereof, to the satisfaction of the following conditions:

(a) Notice of Borrowing, Continuation or Conversion, etc. The Administrative Agent shall have received a Notice of Borrowing, Continuation or Conversion meeting the requirements of Section 2.2 with respect to the Borrowing, Continuation or Conversion of a Loan, or a Letter of Credit Request meeting the requirement of Section 3.2 with respect to the issuance of a Letter of Credit, or a Notice of Borrowing, Continuation or Conversion of a Loan meeting the requirement of Section 2.8 with respect to the making of a Swingline Loan.

(b) No Default; Representations and Warranties. At the time of each Credit Event and after giving effect thereto, (i) there shall exist no Default or Event of Default; (ii) there shall have occurred no Material Adverse Effect and (iii) all representations and warranties of the Credit Parties contained herein or in the other Credit Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date of such Credit Event, except to the extent that such representations and warranties expressly relate to an earlier specified date, in which case such representations and warranties shall have been true and correct in all material respects as of the date when made.

The acceptance of the benefits of each Credit Event shall constitute a representation and warranty by the Borrower to each of the Lenders that all of the applicable conditions specified in Sections 6.1 and/or 6.2, as the case may be, have been satisfied as of the times referred to in Sections 6.1 and 6.2.

## ARTICLE VII. REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders to enter into this Agreement and to make the Loans and the Swingline Loans and to issue and to participate in the Letters of Credit provided for herein, each Borrower makes the following representations and warranties to, and agreements with, the Lenders, all of which shall survive the execution and delivery of this Agreement and each Credit Event:

7.1 Corporate Status, etc. Each Borrower and each of its Subsidiaries (i) is a duly organized or formed and validly existing corporation, partnership or limited liability company, as the case may be, in good standing or full force and effect, as applicable, under the laws of the jurisdiction of its formation and has the corporate, partnership or limited liability company power and authority, as applicable, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage, and (ii) has duly qualified and is authorized to do business in all jurisdictions where it is required to be so qualified except where the failure to be so qualified would not have a Material Adverse Effect. Schedule 7.1 hereto lists, as of the Closing Date, each Subsidiary of the Borrower (and the direct and indirect ownership interest of the Borrower therein).

7.2 Corporate Power and Authority, etc. Each Credit Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Credit Documents to which it is party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Credit Documents to which it is party. Each Credit Party has duly executed and delivered each Credit Document to which it is party, and each Credit Document to which it is party constitutes the legal, valid and binding agreement or obligation of such Credit Party enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

7.3 No Violation. Neither the execution, delivery and performance by any Credit Party of the Credit to which it is party nor compliance with the terms and provisions thereof (i) will contravene any law, statute, rule, regulation, order, writ, injunction or decree of any Governmental Authority applicable to such Credit Party or its properties and assets, (ii) will conflict with or result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (other than the Liens created pursuant to the Security Documents) upon any of the property or assets of such Credit Party pursuant to the terms of any promissory note, bond, debenture, indenture, mortgage, deed of trust, credit or loan agreement, or any other agreement or other instrument, to which such Credit Party is a party or by which it or any of its property or assets are bound or to which it may be subject other than when consent has been obtained, or (iii) will violate any provision of the certificate or articles of incorporation, code of regulations or by-laws, or other charter documents of such Credit Party.

7.4 Governmental Approvals. No order, consent, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, any Governmental Authority is required to authorize or is required as a condition to (i) the execution, delivery and performance by any Credit Party of any Credit Document to which it is a party, or (ii) the legality, validity, binding effect or enforceability of any Credit Document to which any Credit Party is a party, except the filing and recording of financing statements and other documents necessary in order to perfect the Liens created by the Security Documents.

7.5 Litigation. There are no actions, suits or proceedings pending or, to, the knowledge of the Borrower, threatened with respect to the Borrowers or any of their Subsidiaries (i) that have, or could reasonably be expected to have, a Material Adverse Effect, or (ii) that question the validity or enforceability of any of the Credit Documents, or of any action to be taken by any Borrower or any of the other Credit Parties pursuant to any of the Credit Documents.

7.6 Use of Proceeds; Margin Regulations.

(a) The proceeds of all Loans shall be utilized to refinance existing senior debt facilities, provide funds for Permitted Acquisitions, provide funds for investments in joint ventures permitted pursuant to Section 9.5(m), and provide working capital and funds for general corporate and other lawful purposes not inconsistent with the requirements of this Agreement.

(b) No part of the proceeds of any Credit Event will be used directly or indirectly to purchase or carry Margin Stock, or to extend credit to others for the purpose of purchasing or carrying any Margin Stock, in violation of any of the provisions of Regulation U or X of the Board of Governors of the Federal Reserve System. Neither Borrower is engaged in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. At no time would more than 25% of the value of the assets of any Borrower or of the Borrowers and their consolidated Subsidiaries that are subject to any "arrangement" (as such term is used in Section 221.2(g) of such Regulation U) hereunder be represented by Margin Stock.

7.7 Financial Statements, etc.

(a) The Borrowers have furnished to the Lenders and the Administrative Agent complete and correct copies of (i) the audited consolidated balance sheets of the Borrowers and their consolidated subsidiaries as of December 31, 2003 and the related audited consolidated statements of income, shareholders' equity, and cash flows of the Borrower and its consolidated subsidiaries for the fiscal years then ended, accompanied by the report thereon of PricewaterhouseCoopers LLP; and (ii) the consolidated balance sheets of the Borrowers and their consolidated subsidiaries as of September 30, 2004 and the related consolidated statements of income and of cash flows of the Borrowers and their consolidated subsidiaries for the fiscal period then ended, as included in the Borrower's Report on Form 10-Q for the fiscal quarter ended September 30, 2004, filed with the SEC. All such financial statements have been prepared in accordance with GAAP, consistently applied (except as stated therein), and fairly present the financial position of the entities described in such financial statements as of the respective dates indicated and the consolidated results of their operations and cash flows for the respective periods indicated, subject in the case of any such financial statements that are unaudited, to normal audit adjustments, none of which will involve a Material Adverse Effect. The Borrowers and their Subsidiaries did not have, as of the date of the latest financial statements referred to above, and will not have as of the Closing Date after giving effect to the incurrence of Loans hereunder, any material or significant contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the foregoing financial statements or the notes thereto in accordance with GAAP and that in any such case is material in relation to the business, operations, properties, assets, financial or other condition or prospects of the Borrowers or any of their Subsidiaries.

7.8 Solvency. Each Borrower has received consideration that is the reasonable equivalent value of the obligations and liabilities that such Borrower has incurred to the Administrative Agent and the Lenders. Each Borrower now has capital sufficient to carry on its business and transactions and all business and transactions in which it is about to engage and is now solvent and able to pay its debts as they mature and each Borrower, as of the Closing Date, owns property having a value, both at fair valuation and at present fair salable value, greater than the amount required to pay such Borrower's debts; and such Borrower is not entering into the Credit Documents with the intent to hinder, delay or defraud its creditors. For purposes of this Section 7.8, "debt" means any liability on a claim, and "claim" means (x) right to payment whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (y) right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

7.9 No Material Adverse Effect. Since September 30, 2004, there has been no change in the financial or other condition, business, affairs or prospects of the Borrowers and their Subsidiaries taken as a whole, or their properties and assets considered as an entirety, except for changes none of which, individually or in the aggregate, has had or could reasonably be expected to have, a Material Adverse Effect.

7.10 Tax Returns and Payments. Each of the Borrowers and each of their Subsidiaries has filed all federal income tax returns and all other material tax returns, domestic and foreign, required to be filed by it and has paid all material taxes and assessments payable by it that have become due, other than those not yet delinquent and except for those contested in good faith. The Borrowers and each of their Subsidiaries has established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by GAAP. The Borrowers know of no proposed assessment for additional federal, foreign or state taxes for any period, or of any basis therefor, which, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as the Borrowers and their Subsidiaries have made, could reasonably be expected to have a Material Adverse Effect.

7.11 Title to Properties, etc. Each Borrower and each of its Subsidiaries has good and marketable title (or valid Leaseholds, in the case of any leased property), to all of its properties and assets free and clear of Liens other than Permitted Liens. The interests of the Borrowers and each of their Subsidiaries in the properties reflected in the most recent balance sheet referred to in Section 7.7, taken as a whole, were sufficient, in the judgment of the Borrowers, as of the date of such balance sheet for purposes of the ownership and operation of the businesses conducted by the Borrower and such Subsidiaries.

7.12 Lawful Operations, etc. Each Borrower and each of its Subsidiaries: (i) holds all necessary federal, state and local governmental licenses, registrations, certifications, permits and authorizations necessary to conduct its business, except to the extent the failure to so hold could reasonably be expected to have a Material Adverse Effect; (ii) is in full compliance with all material requirements imposed by law, regulation or rule, whether federal, state or local, that are applicable to it, its operations, or its properties and assets, including without limitation, applicable requirements of Environmental Laws, except for any failure to obtain and maintain in effect, or noncompliance, that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; (iii) conduct their business in compliance with all provisions of the Fair Debt Practices Collection Act and all other applicable federal, state or local laws governing the collection of debts and neither Borrower nor any of its Subsidiaries is in material violation of any of such laws; and (iv) are in compliance with all federal, state and local privacy laws.

7.13 Environmental Matters.

(a) Each Borrower and each of its Subsidiaries is in compliance with all Environmental Laws governing its business, except to the extent that any such failure to comply (together with any resulting penalties, fines or forfeitures) would not reasonably be expected to have a Material Adverse Effect. All licenses, permits, registrations or approvals required for the conduct of the business of each Borrower and each of its Subsidiaries under any Environmental Law have been secured and each Borrower and each of its Subsidiaries is in substantial compliance therewith, except for such licenses, permits, registrations or approvals the failure to secure or to comply therewith is not reasonably likely to have a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries has received written notice, or otherwise knows, that it is in any respect in noncompliance with, breach of or default under any applicable writ, order, judgment, injunction, or decree to which such Borrower or such Subsidiary is a party or that would affect the ability of such Borrower or such Subsidiary to operate any Real Property and no event has occurred and is continuing that, with the passage of time or the giving of notice or both, would constitute noncompliance, breach of or default thereunder, except in each such case, such noncompliance, breaches or defaults as would not reasonably be expected to, in the aggregate, have a Material Adverse Effect. There are no Environmental Claims pending or, to the best knowledge of the Borrowers, threatened wherein an unfavorable decision, ruling or finding would reasonably be expected to have a Material Adverse Effect. There are no facts, circumstances, conditions or occurrences on any Real Property now or at any time owned, leased or operated by any Borrower or any of its Subsidiaries or on any property adjacent to any such Real Property, that are known by the Borrowers or as to which any Borrower or any such Subsidiary has received written notice, that could reasonably be expected: (i) to form the basis of an Environmental Claim against any Borrower or any of its Subsidiaries or any Real Property of any Borrower or any of its Subsidiaries; or (ii) to cause such Real Property to be subject to any restrictions on the ownership, occupancy, use or transferability of such Real Property under any Environmental Law, except in each such case, such Environmental Claims or restrictions that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

(b) Hazardous Materials have not at any time been (i) generated, used, treated or stored on, or transported to or from, any Real Property of any Borrower or any of its Subsidiaries or (ii) released on any such Real Property, in each case where such occurrence or event is not in compliance with Environmental Laws and is reasonably likely to have a Material Adverse Effect.

7.14 Compliance with ERISA. Compliance by the Borrowers with the provisions hereof and Credit Events contemplated hereby will not involve any prohibited transaction within the meaning of ERISA or Section 4975 of the Code. The Borrowers and each of their Subsidiaries, (i) have fulfilled all obligations under minimum funding standards of ERISA and the Code with respect to each Plan that is not a Multiemployer Plan or a Multiple Employer Plan, (ii) has satisfied all respective contribution obligations in respect of each Multiemployer Plan and each Multiple Employer Plan, (iii) is in compliance in all material respects with all other applicable provisions of ERISA and the Code with respect to each Plan, each Multiemployer Plan and each Multiple Employer Plan, and (iv) has not incurred any liability under the Title IV of ERISA to the PBGC with respect to any Plan, any Multiemployer Plan, any Multiple Employer Plan, or any trust established thereunder. No Plan or trust created thereunder has been terminated, and there have been no Reportable Events, with respect to any Plan or trust created thereunder or with respect to any Multiemployer Plan or Multiple Employer Plan, which termination or Reportable Event will or could result in the termination of such Plan, Multiemployer Plan or Multiple Employer Plan and give rise to a material liability of the Borrower or any ERISA Affiliate in respect thereof. Neither Borrower nor any ERISA Affiliate is at the date hereof, or has been at any time within the two years preceding the date hereof, an employer required to contribute to any Multiemployer Plan or Multiple Employer Plan, or a "contributing sponsor" (as such term is defined in Section 4001 of ERISA) in any Multiemployer Plan or Multiple Employer Plan. Neither the Borrower nor any ERISA Affiliate has any contingent liability with respect to any post-retirement "welfare benefit plan" (as such term is defined in ERISA) except as has been disclosed to the Lenders in writing.

7.15 Intellectual Property, etc. Each Borrower and each of its Subsidiaries has obtained or has the right to use all material patents, trademarks, service marks, trade names, copyrights, licenses and other rights with respect to the foregoing necessary for the present conduct of its business, without any known conflict with the rights of others, except for such patents, trademarks, service marks, trade names, copyrights, licenses and rights, the loss of which, and such conflicts, which in any such case individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

7.16 Investment Company Act, etc. Neither Borrower nor any of its Subsidiaries is subject to regulation with respect to the creation or incurrence of Indebtedness under the Investment Company Act of 1940, as amended, the Interstate Commerce Act, as amended, the Federal Power Act, as amended, the Public Utility Holding Company Act of 1935, as amended, or any applicable state public utility law.

7.17 Insurance. Each Borrower and each of its Subsidiaries maintains insurance coverage by such insurers and in such forms and amounts and against such risks as are generally consistent with industry standards and in compliance with the terms of the Credit Documents.

7.18 Certain Contracts; Labor Relations. Neither Borrower nor any of its Subsidiaries (i) is subject to any burdensome contract, agreement, corporate restriction, judgment, decree or order, (ii) is a party to any labor dispute affecting any bargaining unit or other group of employees generally, (iii) is subject to any strike, slow down, walk out or other concerted interruptions of operations by employees of such Borrower or any Subsidiary, whether or not relating to any labor contracts, (iv) is subject to any pending or, to the knowledge of the Borrowers, threatened, unfair labor practice complaint, before the National Labor Relations Board, (v) is subject to any pending or, to the knowledge of the Borrowers, threatened, grievance or arbitration proceeding arising out of or under any collective bargaining agreement, (vi) is subject to any pending or, to the knowledge of the Borrowers, threatened, strike, labor dispute, slowdown or stoppage, or (vii) is, to the knowledge of the Borrowers, involved or subject to any union representation organizing or certification matter with respect to the employees of any Borrower or any of its Subsidiaries, except (with respect to any matter specified in any of the above clauses), for such matters as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

7.19 True and Complete Disclosure. All factual information (taken as a whole) heretofore or contemporaneously furnished by or on behalf of any Borrower or any of its Subsidiaries in writing to the Administrative Agent or any Lender for purposes of or in connection with this Agreement or any transaction contemplated herein, is, and all other such factual information (taken as a whole) hereafter furnished by or on behalf of such person in writing to any Lender will be, true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any material fact necessary to make such information (taken as a whole) not misleading at such time in light of the circumstances under which such information was provided.

7.20 Anti-Terrorism Law Compliance. Neither the Borrowers nor any of their Subsidiaries are subject to or in violation of any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list, Executive Order No. 13224 or the USA Patriot Act) that prohibits or limits the conduct of business with or the receiving of funds, goods or services to or for the benefit of certain persons specified therein or that prohibits or limits any Lender or Letter of Credit Issuer from making any advance or extension of credit to the Borrowers or from otherwise conducting business with the Borrowers.

#### ARTICLE VIII. AFFIRMATIVE COVENANTS

Each Borrower hereby covenants and agrees that on the Closing Date and thereafter so long as this Agreement is in effect and until such time as the Total Commitment has been terminated, no Notes remain outstanding and the Loans and Swingline Loans, together with interest, Fees and all other Obligations incurred hereunder and under the other Credit Documents, have been paid in full:

8.1 Reporting Requirements. The Borrower Representative will furnish to each Lender and the Administrative Agent:

(a) Annual Financial Statements. As soon as available and in any event within 90 days after the close of each fiscal year of the Borrowers, the consolidated balance sheets of the Borrowers and their consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income, of stockholders' equity and of cash flows for such fiscal year, in each case setting forth comparative figures for the preceding fiscal year, all in reasonable detail and accompanied by the opinion with respect to such consolidated financial statements of independent public accountants of recognized national standing selected by the Borrowers, which opinion shall be unqualified and shall (i) state that such accountants audited such consolidated financial statements in accordance with generally accepted auditing standards, that such accountants believe that such audit provides a reasonable basis for their opinion, and that in their opinion such consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Borrowers and their consolidated subsidiaries as at the end of such fiscal year and the consolidated results of their operations and cash flows for such fiscal year in conformity with generally accepted accounting principles, or (ii) contain such statements as are customarily included in unqualified reports of independent accountants in conformity with the recommendations and requirements of the American Institute of Certified Public Accountants (or any successor organization).

(b) Quarterly Financial Statements. As soon as available and in any event within 45 days after the close of each of the quarterly accounting periods in each fiscal year of the Borrowers, the unaudited consolidated balance sheets of the Borrowers and their consolidated Subsidiaries as at the end of such quarterly period and the related unaudited consolidated statements of income and of cash flows for such quarterly period and/or for the fiscal year to date, and setting forth, in the case of such unaudited consolidated statements of income and of cash flows, comparative figures for the related periods in the prior fiscal year, and which shall be certified on behalf of the Borrower Representative by an Authorized Officer of the Borrower Representative, subject to changes resulting from normal year-end audit adjustments.

(c) Officer's Compliance Certificates. At the time of the delivery of the financial statements provided for in Sections 8.1(a) and (b), a certificate on behalf of the Borrowers by an Authorized Officer of the Borrower Representative to the effect that no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof and the actions the Borrowers propose to take with respect thereto, which certificate shall set forth the calculations required to establish compliance with the provisions of Section 9.7 of this Agreement.

(d) Notice of Default, Litigation, Violation of Material Agreement. Promptly, and in any event within three Business Days after any of the Borrowers or any of their Subsidiaries obtains knowledge thereof, notice of

(i) the occurrence of any event that constitutes a Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrowers propose to take with respect thereto; or

(ii) the commencement of, or any other material development concerning, any litigation, governmental or regulatory proceeding pending against any Borrower or any of its Subsidiaries, or any other event if the same involves any reasonable possibility of having a Material Adverse Effect.

(e) ERISA. Promptly, and in any event within 10 days after any Borrower, any Subsidiary of any Borrower or any ERISA Affiliate knows of the occurrence of any of the following, the Borrower Representative will deliver to each of the Lenders a certificate on behalf of the Borrowers by an Authorized Officer of the Borrower Representative setting forth the full details as to such occurrence and the action, if any, that such Borrower, such Subsidiary or such ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given to or filed with or by any Borrower, the Subsidiary, the ERISA Affiliate, the PBGC, a Plan participant or the Plan administrator with respect thereto (i) that a Reportable Event has occurred with respect to any Plan; (ii) the institution of any steps by any Borrower, any ERISA Affiliate, the PBGC or any other person to terminate any Plan; (iii) the institution of any steps by any Borrower or any ERISA Affiliate to withdraw from any Plan; (iv) the institution of any steps by any Borrower or any Subsidiary to withdraw from any Multiemployer Plan or Multiple Employer Plan, if such withdrawal could result in withdrawal liability (as described in Part 1 of Subtitle E of Title IV of ERISA) in excess of \$5,000,000; (v) a non-exempt "prohibited transaction" within the meaning of Section 406 of ERISA in connection with any Plan; (vi) that a Plan has an Unfunded Current Liability exceeding \$5,000,000; (vii) any material increase in the contingent liability of any Borrower or any Subsidiary with respect to any post-retirement welfare liability; or (viii) the taking of any action by, or the threatening of the taking of any action by, the Internal Revenue Service, the Department of Labor or the PBGC with respect to any of the foregoing.

(f) Environmental Matters. Promptly upon, and in any event within 10 Business Days after, any Borrower or any of its Subsidiaries obtains knowledge thereof, notice of one or more of the following environmental matters: (i) any pending or threatened material Environmental Claim against any Borrower or any of its Subsidiaries or any Real Property owned or operated by any Borrower or any of its Subsidiaries; (ii) any condition or occurrence on or arising from any Real Property owned or operated by any Borrower or any of its Subsidiaries that (A) results in material noncompliance by any Borrower or any of its Subsidiaries with any applicable Environmental Law or (B) would reasonably be expected to form the basis of a material Environmental Claim against any Borrower or any of its Subsidiaries or any such Real Property; (iii) any condition or occurrence on any Real Property owned, leased or operated by any Borrower or any of its Subsidiaries that could reasonably be expected to cause such Real Property to be subject to any material restrictions on the ownership, occupancy, use or transferability by any Borrower or any of its Subsidiaries of such Real Property under any Environmental Law; and (iv) the taking of any material removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any Real Property owned, leased or operated by any Borrower or any of its Subsidiaries as required by any Environmental Law or any governmental or other administrative agency. All such notices shall describe in reasonable detail the nature of the Environmental Claim, such Borrower's or such Subsidiary's response thereto and, to the extent reasonably ascertainable, the potential exposure in dollars of the Borrowers and their Subsidiaries with respect thereto.

(g) SEC Reports and Registration Statements. Promptly after transmission thereof or other filing with the SEC, copies of all registration statements and all annual, quarterly or current reports that any Borrower or any of its Subsidiaries is required to file with the SEC on Form 10-K, 10-Q or 8-K (or any successor forms).

(h) Annual and Quarterly Reports, Proxy Statements and other Reports Delivered to Stockholders Generally. Promptly after transmission thereof to its stockholders, copies of all annual, quarterly and other reports and all proxy statements that Gibraltar Industries, Inc. furnishes to its stockholders generally.

(i) Auditors' Internal Control Comment Letters, etc. Promptly upon receipt thereof, a copy of each letter or memorandum commenting on internal accounting controls and/or accounting or financial reporting policies followed by the Borrowers and/or any of their Subsidiaries that is submitted to any Borrower by its independent accountants in connection with any annual or interim audit made by them of the books of any Borrower or any of its Subsidiaries.

(j) Other Information. Promptly, but in any event within 10 Business Days upon request therefor, such other information or documents (financial or otherwise) relating to the Borrowers or any of their Subsidiaries as the Administrative Agent or any Lender may reasonably request from time to time.

8.2 Books, Records and Inspections. The Borrowers will, and will cause each of their Subsidiaries to, (i) keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of such Borrowers or such Subsidiaries, as the case may be, in accordance with GAAP; and (ii) permit, upon reasonable prior notice to the Borrower Representative, officers and designated representatives of the Administrative Agent or any of the Lenders to visit and inspect any of the properties or assets of any of the Borrowers and any of their Subsidiaries in whomsoever's possession to examine the books of account of any of the Borrowers and any of their Subsidiaries, and make copies thereof and take extracts therefrom, and to discuss the affairs, finances and accounts of any of the Borrowers and of any of their Subsidiaries with, and be advised as to the same by, its and their officers and independent accountants and independent actuaries, if any, all at such reasonable times and intervals and to such reasonable extent as the Administrative Agent or any of the Lenders may request.

### 8.3 Insurance.

(a) The Borrowers will, and will cause each of their Subsidiaries to, (i) maintain insurance coverage by such insurers and in such forms and amounts and against such risks as are generally consistent with the insurance coverage maintained by the Borrowers and their Subsidiaries at the date hereof, and (ii) forthwith upon any Lender's written request, furnish to such Lender such information about such insurance as such Lender may from time to time reasonably request, which information shall be prepared in form and detail satisfactory to such Lender and certified by an Authorized Officer of the Borrower Representative.

(b) The Borrowers will, and will cause each of their Subsidiaries that is a Credit Party to, at all times keep their respective property that is subject to the Lien of any of the Security Documents insured in favor of the Administrative Agent, and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other insurance maintained by any Borrower or any such Subsidiary) (i) shall be endorsed to the Administrative Agent's satisfaction for the benefit of the Administrative Agent (including, without limitation, by naming the Administrative Agent as an additional loss payee (with respect to Collateral) or, to the extent permitted by applicable law, as an additional insured as its interests may appear), (ii) shall state that such insurance policies shall not be canceled, reduced or expire without 30 days' prior written notice thereof (or 10 days' prior written notice in the case of cancellation for the non-payment of premiums) by the respective insurer to the Administrative Agent, (iii) shall provide that the respective insurers irrevocably waive any and all rights of subrogation with respect to the Administrative Agent and the Lenders, (iv) shall in the case of any such certificates or endorsements in favor of the Administrative Agent, be delivered to or deposited with the Administrative Agent, and (v) shall provide that the interests of the Administrative Agent shall not be invalidated by an act or negligence of any Borrower or any Subsidiary or any person having an interest in any facility owned, leased or used by any Borrower or any of its Subsidiaries nor by occupancy or use of any facility owned, leased or used by any Borrower or any Subsidiary for purposes more hazardous than permitted by such policy nor by any foreclosure or other proceedings relating to any facility owned, leased or used by any Borrower or any Subsidiary. The Borrower Representative shall deliver to the Administrative Agent contemporaneously with the expiration or replacement of any policy of insurance required to be maintained by this Agreement a certificate as to the new or renewal policy. The Borrower Representative shall advise the Administrative Agent promptly upon the cancellation, reduction or amendment of any policy. If requested to do so by the Administrative Agent at any time, the Borrower Representative shall deliver copies of all insurance policies maintained by it as required by this Agreement. The Administrative Agent shall deliver copies of any certificates of insurance to a Lender upon such Lender's reasonable request.

(c) If any Borrower or any of its Subsidiaries shall fail to maintain any insurance in accordance with this Section 8.3, or if any Borrower or any of its Subsidiaries shall fail to so endorse and deliver or deposit all endorsements or certificates with respect thereto, the Administrative Agent shall have the right (but shall be under no obligation), upon prior written notice to the Borrower Representative, to procure such insurance and the Borrowers agree to reimburse the Administrative Agent on demand, for all actual costs and expenses of procuring such insurance.

8.4 Payment of Taxes and Claims. Each of the Borrowers will pay and discharge, and will cause each of its Subsidiaries to pay and discharge, all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims that, if unpaid, might become a Lien or charge upon any properties of such Borrower or any of its Subsidiaries; provided that neither such Borrower nor any of its Subsidiaries shall be required to pay any such tax, assessment, charge, levy or claim that is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP. Without limiting the generality of the foregoing, each Borrower will, and will cause each of its Subsidiaries to, pay in full all of its wage obligations to its employees in accordance with the Fair Labor Standards Act (29 U.S.C. Sections 206 207) and any comparable provisions of applicable law.

8.5 Corporate Franchises. Each Borrower will do, and will cause each of its Subsidiaries to do, or cause to be done, all things necessary to preserve and keep in full force and effect its corporate existence, rights and authority, provided that nothing in this Section 8.5 shall be deemed to prohibit any transaction permitted by Section 9.2.

8.6 Good Repair. Each Borrower will, and will cause each of its Subsidiaries to, ensure that its material properties and equipment used or useful in its business in whomsoever's possession they may be, are kept in good repair, working order and condition, normal wear and tear excepted, and that from time to time there are made in such properties and equipment all needful and proper repairs, renewals, replacements, extensions, additions, betterments and improvements, thereto, to the extent and in the manner customary for companies in similar businesses.

8.7 Compliance with Statutes, etc. Each Borrower will, and will cause each of its Subsidiaries to, comply, in all material respects, with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property, other than those the noncompliance with which will not have, and that would not be reasonably expected to have, a Material Adverse Effect.

8.8 Compliance with Environmental Laws. Without limitation of the covenants contained in Section 8.7 hereof,

(a) Each Borrower will comply, and will cause each of its Subsidiaries to comply, in all material respects, with all Environmental Laws applicable to the ownership, lease or use of all Real Property now or hereafter owned, leased or operated by such Borrower or any of its Subsidiaries, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, except to the extent that such compliance with Environmental Laws is being contested in good faith and by appropriate proceedings and for which adequate reserves have been established to the extent required by GAAP, and an adverse outcome in such proceedings is not reasonably expected to have a Material Adverse Effect.

(b) Each Borrower will keep or cause to be kept, and will cause each of its Subsidiaries to keep or cause to be kept, all such Real Property free and clear of any Liens imposed pursuant to such Environmental Laws that are not permitted under Section 9.3.

(c) No Borrower nor any of its Subsidiaries will generate, use, treat, store, release or dispose of, or permit the generation, use, treatment, storage, release or disposal of, Hazardous Materials on any Real Property now or hereafter owned, leased or operated by such Borrower or any of its Subsidiaries or transport or permit the transportation of Hazardous Materials to or from any such Real Property other than in

compliance with applicable Environmental Laws, except for such noncompliance as would not have, and that would not be reasonably expected to have, a Material Adverse Effect.

(d) If required to do so under any applicable order of any Governmental Authority, the Borrower will undertake, and cause each of its Subsidiaries to undertake, any clean up, removal, remedial or other action necessary to remove and clean up any Hazardous Materials from any Real Property owned, leased or operated by any Borrower or any of its Subsidiaries in accordance with, in all material respects, the requirements of all applicable Environmental Laws and in accordance with, in all material respects, such orders of all Governmental Authorities, except to the extent that such Borrower or such Subsidiary is contesting such order in good faith and by appropriate proceedings and for which adequate reserves have been established to the extent required by GAAP.

(e) At the written request of the Administrative Agent or the Required Lenders, which request shall specify in reasonable detail the basis therefor, at any time and from time to time after the Lenders receive notice under Section 8.1(f) for any Environmental Claim involving potential expenditures by any Borrower or any of its Subsidiaries in excess of \$5,000,000 in the aggregate for any Real Property, such Borrower will provide, at its sole cost and expense, an environmental site assessment report concerning any such Real Property now or hereafter owned, leased or operated by such Borrower or any of its Subsidiaries, prepared by an environmental consulting firm reasonably acceptable to the Administrative Agent, indicating the presence or absence of Hazardous Materials and the potential cost of any removal or a remedial action in connection with any Hazardous Materials on such Real Property. If the Borrower fails to provide the same within 90 days after such request was made, the Administrative Agent may order the same, and such Borrower shall grant and hereby grants, to the Administrative Agent and the Lenders and their agents, access to such Real Property and specifically grants the Administrative Agent and the Lenders an irrevocable non-exclusive license, subject to the rights of tenants, to undertake such an assessment, all at the Borrower's expense.

8.9 Fiscal Years, Fiscal Quarters. No Borrower shall change its or any of its Subsidiaries' fiscal years or fiscal quarters (other than the fiscal year or fiscal quarters of a person that becomes a Subsidiary, made at the time such person becomes a Subsidiary to conform to such Borrower's fiscal year and fiscal quarters).

8.10 Certain Subsidiaries to Join in Subsidiary Guaranty.

(a) In the event that at any time after the Closing Date (x) any Borrower creates, holds, acquires or at any time has any Subsidiary (other than the Excluded Subsidiaries and other than a Foreign Subsidiary as to which Section 8.10(b) applies) that is not a party to the Subsidiary Guaranty, or (y) an Event of Default shall have occurred and be continuing and any Borrower has any Subsidiary that is not a party to the Subsidiary Guaranty, such Borrower will immediately, but in any event within 5 Business Days, notify the Administrative Agent in writing of such event, identifying the Subsidiary in question and referring specifically to the rights of the Administrative Agent and the Lenders under this Section. The Borrower will, within 15 days following request therefor from the Administrative Agent (who may give such request on its own initiative or upon request by the Required Lenders), cause such Subsidiary to deliver to the Administrative Agent, in sufficient quantities for the Lenders, (i) a joinder supplement, reasonably satisfactory in form and substance to the Administrative Agent, duly executed by such Subsidiary, pursuant to which such Subsidiary joins in the Subsidiary Guaranty as a guarantor thereunder, and (ii) if such Subsidiary is a corporation, resolutions of the Board of Directors of such Subsidiary, certified by the Secretary or an Assistant Secretary of such Subsidiary as duly adopted and in full force and effect, authorizing the execution and delivery of such joinder supplement, or if such Subsidiary is not a corporation, such other evidence of the authority of such Subsidiary to execute such joinder supplement as the Administrative Agent may reasonably request. Notwithstanding the foregoing, in the event an Excluded Subsidiary shall cease to be an inactive Subsidiary or shall acquire assets or liabilities having a value in excess of \$10,000,000 in the aggregate, the Borrower will immediately, and in any event within 5 Business Days, notify the Administrative Agent in writing of such event, referring specifically to the rights of the Administrative Agent and the Lenders under this Section. The Borrower will, within 15 days following request therefor from the Administrative Agent (who may give such request on its own initiative or upon request by the Required Lenders), cause such Excluded Subsidiary to deliver to the Administrative Agent, in sufficient quantities for the Lenders, (i) a joinder supplement, reasonably satisfactory in form and substance to the Administrative Agent, duly executed by such Excluded Subsidiary, pursuant to which such Excluded Subsidiary joins in the Subsidiary Guaranty as a guarantor thereunder, and (ii) such other evidence of the authority of such Excluded Subsidiary to execute such joinder supplement as the Administrative Agent may reasonably request.

(b) Notwithstanding the foregoing or the provisions of Section 8.11 hereof, no Borrower shall, unless an Event of Default shall have occurred and be continuing, be required to pledge (or cause to be pledged) more than 65% of the stock or other equity interests in any first tier Foreign Subsidiary, or any of the stock or other equity interests in any other Foreign Subsidiary, or to cause a Foreign Subsidiary to join in the Subsidiary Guaranty or to become a party to the Security Agreement or any other Security Document, if (i) to do so would subject such Borrower to liability for additional United States income taxes by virtue of Section 956 of the Code in an amount such Borrower considers material, and (ii) such Borrower provides the Administrative Agent with documentation, including computations prepared by the Borrower's internal tax officer, its independent accountants or tax counsel, reasonably acceptable to the Required Lenders, in support thereof.

8.11 Additional Security; Further Assurances.

(a) In the event that at any time after the Closing Date,

(i) any Borrower or any of its Subsidiaries acquires, or a person that has become a Subsidiary owns or holds, an interest in assets, stock, securities or any other property or interest, located in the United States or arising out of business conducted in or from the United States, that is not at the time included in the Collateral and is not subject to a Permitted Lien securing Indebtedness, such Borrower will notify the Administrative Agent in writing of such event, identifying the property or interests in question and referring specifically to the rights of the Administrative Agent and the Lenders under this Section, or

(ii) an Event of Default shall have occurred and be continuing and any Borrower or any Subsidiary at any time owns or holds an interest in any assets, stock, securities or any other property or interest, located within or outside of the United States or arising out of business conducted from any location within or outside the United States, that is not at the time included in the Collateral and is not subject to a Permitted Lien securing Indebtedness,

subject to Section 8.10(b) hereof, Borrower will, or will cause such Subsidiary to, within 30 days, grant the Administrative Agent for the benefit of the Lenders security interests pursuant to an "Additional Security Document") or joinder in any existing Security Document, in such assets, interests or properties of such Borrower or any Subsidiary, subject to obtaining any required consents from third parties (including third party lessors and co-venturers) necessary to be obtained for the granting of a Lien on the interests or assets involved (with the Borrowers hereby agreeing to use best efforts to obtain such consents).

(b) Each Additional Security Document (i) shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent, and other supporting documentation requested by and reasonably satisfactory in form and substance to the Administrative Agent; and (ii) shall constitute a valid and enforceable perfected Lien upon the interests or properties so included in the Collateral, superior to and prior to the rights of all third persons and subject to no other Liens except Permitted Liens or otherwise agreed by the

Administrative Agent at the time of perfection thereof. The Borrowers, at their sole cost and expense, will cause each Additional Security Document or instruments related thereto to be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens created thereby required to be granted pursuant to the Additional Security Document, and will pay or cause to be paid in full all taxes, fees and other charges payable in connection therewith. Furthermore, the Borrowers shall cause to be delivered to the Administrative Agent such opinions of local counsel, appraisals, title insurance, surveys, environmental assessments, consents of landlords, lien waivers from landlords or mortgagees and other related documents as may be reasonably requested by the Administrative Agent or any other Agent in connection with the execution, delivery and recording of any Additional Security Document, all of which documents shall be in form and substance reasonably satisfactory to the Administrative Agent.

(c) The Borrowers will, and will cause each of their Subsidiaries to, at the expense of the Borrowers, make, execute, endorse, acknowledge, file and/or deliver to the Administrative Agent from time to time such conveyances, financing statements, transfer endorsements, powers of attorney, certificates, and other assurances or instruments and take such further steps relating to the Collateral covered by any of the Security Documents as the Administrative Agent or any other Agent may reasonably require.

(d) The Borrowers will promptly upon request of the Administrative Agent use their best efforts to obtain, and maintain in effect, waivers from landlords and mortgagees having any interest in any Real Property on which any items of Collateral are located, in form and substance reasonably acceptable to the Administrative Agent.

8.12 Most Favored Covenant Status. If any Credit Party at any time after the Closing Date, issues or guarantees any Indebtedness in an aggregate amount exceeding \$5,000,000 (to the extent, if any, that any such Credit Party is permitted to do so under Section 9.4 hereof) pursuant to a loan agreement, credit agreement, note purchase agreement, indenture, guaranty or other similar instrument, which agreement, indenture, guaranty or instrument, includes affirmative or negative business or financial covenants (or any events of default or other type of restriction that would have the practical effect of any affirmative or negative business or financial covenant, including, without limitation, any "put" or mandatory prepayment of such Indebtedness upon the occurrence of a "change of control") that are applicable to any Credit Party, other than those set forth herein or in any of the other Credit Documents, the Borrowers shall promptly so notify the Administrative Agent and the Lenders and, if the Administrative Agent shall so request by written notice to the Borrowers (after a determination has been made by the Required Lenders that any of the above-referenced documents or instruments contain any such provisions, that either individually or in the aggregate, are more favorable to the holders of such unsecured Indebtedness than any of the provisions set forth herein), the Borrowers, the Administrative Agent and the Lenders shall promptly amend this Agreement to incorporate some or all of such provisions, in the discretion of the Administrative Agent and the Required Lenders, into this Agreement and, to the extent necessary and reasonably desirable to the Administrative Agent and the Required Lenders, into any of the other Credit Documents, all at the election of the Administrative Agent and the Required Lenders.

8.13 Senior Debt. The Borrowers will at all times ensure that (i) the claims of the Lenders in respect of the Obligations of the Borrowers or any of them will not be subordinate to, and will in all respects rank senior to the claims of every unsecured creditor of the Borrowers or any of them, and (ii) any Indebtedness of any Borrower that is subordinated in any manner to the claims of any other creditor of any Borrower will be subordinated in like manner to such claims of the Lenders.

8.14 Anti-Terrorism Laws. Neither the Borrowers nor any of their Subsidiaries shall be subject to or in violation of any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list, Executive Order No. 13224 or the USA Patriot Act) that prohibits or limits the conduct of business with or the receiving of funds, goods or services to or for the benefit of certain persons specified therein or that prohibits or limits any Lender or Letter of Credit Issuer from making any advance or extension of credit to the Borrowers or from otherwise conducting business with the Borrowers.

#### ARTICLE IX. NEGATIVE COVENANTS

The Borrowers hereby covenant and agree that on the Closing Date and thereafter for so long as this Agreement is in effect and until such time as the Total Commitment has been terminated, no Notes remain outstanding and the Loans and Swingline Loans, together with interest, Fees and all other Obligations incurred hereunder and under the other Credit Documents, have been paid in full:

9.1 Changes in Business. Neither Borrower nor any of their Subsidiaries will engage in any business if, as a result, the general nature of the business, taken on a consolidated basis, which would then be engaged in by the Borrowers and their Subsidiaries, would be substantially changed from the general nature of the business engaged in by the Borrowers and their Subsidiaries on the Closing Date.

9.2 Consolidation, Merger, Acquisitions, Asset Sales, etc. The Borrowers will not, and will not permit any Subsidiary to, (1) wind up, liquidate or dissolve its affairs, (2) enter into any transaction of merger or consolidation, (3) make or otherwise effect any Acquisition, (4) sell or otherwise dispose of any of its property or assets outside the ordinary course of business, or otherwise make or otherwise effect any Asset Sale, or (5) agree to do any of the foregoing at any future time, except that the following shall be permitted:

(a) Certain Intercompany Mergers, etc. If no Default or Event of Default shall have occurred and be continuing or would result therefrom, each of the following shall be permitted: (i) the merger, consolidation or amalgamation of any Domestic Subsidiary of a Borrower with or into such Borrower, provided such Borrower is the surviving or continuing or resulting corporation; (ii) the merger, consolidation or amalgamation of any Domestic Subsidiary of any Borrower with or into any Subsidiary Guarantor, provided that the surviving or continuing or resulting corporation is a Subsidiary Guarantor; and (iii) the transfer or other disposition of any property by any Borrower to any Subsidiary Guarantor or by any Subsidiary Guarantor to a Borrower or any other Subsidiary Guarantor;

(b) Acquisitions. The Borrowers or any Subsidiary Guarantor may make any Acquisition that is a Permitted Acquisition, provided that all of the conditions contained in the definition of the term Permitted Acquisition are satisfied;

(c) Permitted Dispositions. If no Default or Event of Default shall have occurred and be continuing or would result therefrom, and no Material Adverse Effect has occurred or will result therefrom, the Borrowers or any of their Subsidiaries may consummate any Asset Sale, provided that (i) the consideration for such transaction represents fair value (as determined by any Authorized Officer of the Borrowers); (ii) the cumulative aggregate value of the assets sold or transferred does not exceed 5% of the Borrowers' Consolidated Net Worth for all such transactions completed during any fiscal year, and (iii) in the case of any such transaction involving a sale of assets having a value in excess of \$10,000,000, at least five Business Days prior to the date of completion of such transaction the applicable Borrower shall have delivered to the Administrative Agent an officer's certificate executed on behalf of such Borrower by an Authorized Officer of the Borrowers, which certificate shall contain (x) a description of the proposed transaction, and (y) a certification that no Default, Event of Default or Material Adverse Effect has occurred and is continuing, or would result from consummation of such transaction;

(d) Leases. The Borrowers or any of their Subsidiaries may enter into Operating Leases of property or assets not constituting Acquisitions in the ordinary course of business, provided such leases are not otherwise in violation of this Agreement; and, provided that the total



net consolidated rental payments and expenses under all such Operating Leases do not exceed \$30,000,000 in any of the Borrowers' fiscal years;

(e) Capital Expenditures: The Borrowers and their Subsidiaries shall be permitted to make any Consolidated Capital Expenditures, so long as no Default or Event of Default has occurred and is continuing or will occur as a result of such Consolidated Capital Expenditure; and

(f) Permitted Investments. The Borrowers and their Subsidiaries shall be permitted to make and dispose of the investments permitted pursuant to Section 9.5.

9.3 Liens. The Borrowers will not, and will not permit any of their Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets of any kind (real or personal, tangible or intangible) of any of the Borrowers or any such Subsidiary whether now owned or hereafter acquired, or sell any such property or assets subject to an understanding or agreement, contingent or otherwise, to repurchase such property or assets (including sales of accounts receivable or notes with or without recourse to a Borrower or any of its Subsidiaries, other than for purposes of collection of delinquent accounts in the ordinary course of business) or assign any right to receive income, or file or permit the filing of any financing statement under the UCC or any other similar notice of Lien under any similar recording or notice statute, except that the foregoing restrictions shall not apply to:

(a) Standard Permitted Liens: Standard Permitted Liens;

(b) Existing Liens, etc.: Liens (i) in existence on the Closing Date that are listed, and the Indebtedness secured thereby and the property subject thereto on the Closing Date described, in Schedule 9.3, (ii) arising out of the refinancing, extension, renewal or refunding of any Indebtedness secured by any such Liens, provided that the principal amount of such Indebtedness is not increased and such Indebtedness is not secured by any additional assets; and

(c) Purchase Money Liens: Capital Leases, Synthetic Leases and Liens (i) that are placed upon fixed or capital assets, acquired, constructed or improved by any Borrower or any Subsidiary, provided that (A) the maximum principal amount of Indebtedness secured thereby does not exceed \$25,000,000 in the aggregate at any one time (using Capitalized Lease Obligations in lieu of principal amount, in the case of any Capital Leases, and using the present value, based on the implicit interest rate, in lieu of principal amount, in the case of any Synthetic Lease), (B) such Liens and the Indebtedness secured thereby are incurred prior to or within 120 days after such acquisition or the completion of such construction or improvement, (C) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets; and (D) such Liens shall not apply to any other property or assets of any Borrower or any Subsidiary; or (ii) arising out of the refinancing, extension, renewal or refunding of any Indebtedness secured by any such Liens, provided that the principal amount of such Indebtedness is not increased and such Indebtedness is not secured by any additional assets; and

(d) Liens For Permitted Secured Indebtedness: Liens securing the indebtedness described in Section 9.4(b) below.

9.4 Indebtedness. The Borrowers will not, and will not permit any of their Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Credit Documents: Indebtedness incurred under this Agreement and the other Credit Documents;

(b) Permitted Secured Indebtedness: (i) Indebtedness in connection with note offerings described on Schedule 9.4 hereto and any refinance thereof provided that the principal amount thereof is not increased by more than \$20,000,000, and (ii) any other Indebtedness listed on Schedule 9.4 hereto and existing on the date of this Agreement;

(c) Purchase Money Debt and Capital Lease Obligations: Capital Lease Obligations, Synthetic Leases and other Indebtedness secured by Liens permitted pursuant to Section 9.3(c);

(d) Hedge Agreements: Indebtedness of the Borrowers and their Subsidiaries under Hedge Agreements;

(e) Guaranty Obligations: any Guaranty Obligations permitted by Section 9.5; and

(f) Other Unsecured Debt: other unsecured Indebtedness to the extent not permitted by any of the foregoing clauses provided that at the time of any incurrence thereof after the date hereof, and after giving effect thereto, the Borrowers would be in compliance with Section 9.7 hereof and no Default or Event of Default shall have occurred and be continuing or would result therefrom.

9.5 Investments and Guaranty Obligations. The Borrowers will not, and will not permit any of their Subsidiaries to, directly or indirectly, (1) make or commit to make any Investment or (2) be or become obligated under any Guaranty Obligations, except:

(a) any Borrower or any of its Subsidiaries may invest in cash and Cash Equivalents;

(b) any endorsement of a check or other medium of payment for deposit or collection, or any similar transaction in the normal course of business;

(c) the Borrowers and their Subsidiaries may acquire and hold receivables owing to them in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(d) investments acquired by the Borrowers or any of their Subsidiaries (i) in exchange for any other investment held by any such Borrower or any such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other investment, or (ii) as a result of a foreclosure by a Borrower or any of its Subsidiaries with respect to any secured investment or other transfer of title with respect to any secured investment in default;

(e) loans and advances to employees for business-related travel expenses, moving expenses, costs of replacement homes, business machines or supplies, automobiles and other similar expenses, in each case incurred in the ordinary course of business;

(f) to the extent not permitted by the foregoing clauses, Investments existing as of the Closing Date and described on Schedule 9.5 hereto;

(g) any Guaranty Obligations in favor of the Lenders and any other benefited creditors under any Designated Hedge Agreements pursuant to the Credit Documents;

(h) investments of the Borrowers and their Subsidiaries in Hedge Agreements;

- (i) existing investments in any Subsidiaries and any additional investments in any Subsidiary Guarantor;
- (j) intercompany loans and advances;
- (k) the Acquisitions permitted by Section 9.2;
- (l) any unsecured Guaranty Obligation;
- (m) investments in joint ventures in an aggregate amount not to exceed \$15,000,000 in any of the Borrowers' fiscal years; and
- (n) notes held by a Borrower or a Subsidiary evidencing a portion of the purchase price of an asset disposed of pursuant to Section 9.2(c).

9.6 Dividends and Other Capital Distributions. The Borrowers will not, and will not permit any of their Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Capital Distributions if any Default or Event of Default has occurred and be continuing or would result therefrom, except for Capital Distributions by a Subsidiary to a Borrower or another Guarantor Subsidiary.

#### 9.7 Financial Covenants.

(a) Total Funded Debt to EBITDA Ratio. The Borrowers will not at any time permit the Total Funded Debt to EBITDA Ratio to exceed 3.75 to 1.0.

(b) Senior Funded Debt to EBITDA Ratio. The Borrowers will not at any time permit the Senior Funded Debt to EBITDA Ratio to exceed 3.25 to 1.0.

(c) Interest Coverage Ratio. Borrowers will not at any time permit the Interest Coverage Ratio to be less than 3.0 to 1.0.

(d) Net Worth. The Borrowers will not permit the Net Worth to be less than \$200,000,000 plus, commencing March 31, 2005 and as of the end of each fiscal quarter thereafter 40% of Cumulative Net Income (as defined below). Cumulative Net Income shall be determined as of the last day of each of the Borrowers' fiscal quarters and shall be determined based upon the net income of the Borrowers, on a consolidated basis for the Borrowers and their Subsidiaries as of the last day of each of the Borrowers' fiscal quarters, from December 31, 2004 through the end of the fiscal quarter for which the calculation of Net Worth is being made. For purposes of this Section, in no event shall Cumulative Net Income be less than \$0.

9.8 Limitation on Certain Restrictive Agreements. The Borrowers will not, and will not permit any of their Subsidiaries to, directly or indirectly, enter into, incur or permit to exist or become effective, any "negative pledge" covenant or other agreement, restriction or arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrowers or any Subsidiary to create, incur or suffer to exist any Lien upon any of its property or assets as security for Indebtedness, or (b) the ability of any such Subsidiary to make Capital Distributions or any other interest or participation in its profits owned by a Borrower or any Subsidiary of any Borrower, or pay any Indebtedness owed to the Borrowers or a Subsidiary of any Borrower, or to make loans or advances to a Borrower or any of the Borrower's Subsidiaries, or transfer any of its property or assets to a Borrower or any of a Borrower's other Subsidiaries, except for such restrictions existing under or by reason of (i) applicable law, (ii) this Agreement and the other Credit Documents, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest, (iv) customary provisions restricting assignment of any licensing agreement entered into in the ordinary course of business, (v) customary provisions restricting the transfer or further encumbering of assets subject to Liens permitted under Section 9.3(b) or 9.3(c), (vi) restrictions contained in the agreements relating to the Indebtedness set forth on Schedule 9.4 hereto as in effect on the Closing Date (and any similar restrictions contained in any agreement governing any refinancing or refunding thereof not prohibited by this Agreement), (vii) customary restrictions affecting only a Subsidiary of any Borrower under any agreement or instrument governing any of the Indebtedness of a Subsidiary permitted pursuant to 9.4, (viii) restrictions affecting any Foreign Subsidiary of the Borrower under any agreement or instrument governing any Indebtedness of such Foreign Subsidiary permitted pursuant to 9.4, and customary restrictions contained in "comfort" letters and guarantees of any such Indebtedness, (ix) any document relating to Indebtedness secured by a Lien permitted by Section 9.3, insofar as the provisions thereof limit grants of junior liens on the assets securing such Indebtedness, and (x) any Operating Lease or Capital Lease, insofar as the provisions thereof limit grants of a security interest in, or other assignments of, the related leasehold interest to any other person.

9.9 Prepayments and Refinancings of Other Debt, etc. The Borrowers will not, and will not permit any of their Subsidiaries to, make (or give any notice in respect thereof) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including, without limitation, by way of depositing with the trustee with respect thereto money or securities before due for the purpose of paying when due) or exchange of, or refinance or refund, any Indebtedness of any Borrower or its Subsidiaries that has an outstanding principal balance (or Capitalized Lease Obligation, in the case of a Capital Lease, or present value, based on the implicit interest rate, in the case of a Synthetic Lease) greater than \$5,000,000 (other than the Obligations and intercompany loans and advances among a Borrower and its Subsidiaries); provided that a Borrower or any Subsidiary may refinance or refund any such Indebtedness if the aggregate principal amount thereof (or Capitalized Lease Obligation, in the case of a Capital Lease, or present value, based on the implicit interest rate, in the case of a Synthetic Lease) is not increased.

9.10 Transactions with Affiliates. Except as set forth on Schedule 9.10, the Borrowers will not, and will not permit any of their Subsidiaries to, enter into any transaction or series of transactions with any Affiliate (other than, in the case of the Borrowers, any Subsidiary, and in the case of a Subsidiary, the Borrowers or another Subsidiary) other than in the ordinary course of business of and pursuant to the reasonable requirements of such Borrower's or such Subsidiary's business and upon fair and reasonable terms no less favorable to such Borrower or such Subsidiary than would obtain in a comparable arm's-length transaction with a person other than an Affiliate, except agreements and transactions with and payments to officers, directors and shareholders that are either (A) entered into in the ordinary course of business and not prohibited by any of the provisions of this Agreement, or (B) entered into outside the ordinary course of business, approved by the directors or shareholders of a Borrower, or the applicable Subsidiary as the case may be, and not prohibited by any of the provisions of this Agreement. Nothing in this Section 9.10 shall be construed to prohibit any action otherwise permitted by Section 9.6.

9.11 Plan Terminations, Minimum Funding, etc. The Borrowers will not, and will not permit any ERISA Affiliate to terminate any Plan or Plans so as to result in liability of a Borrower or any ERISA Affiliate to the PBGC in excess of, in the aggregate, the amount that is equal to the greater of (x) \$5,000,000, or (y) 5% of the Borrowers' Consolidated Net Worth as of the date of the then most recent financial statements furnished to the Lenders pursuant to the provisions of this Agreement, (ii) permit to exist one or more events or conditions that reasonably present a material risk of the termination by the PBGC of any Plan or Plans with respect to which the Borrowers or any ERISA Affiliate would, in the event of such termination, incur liability to the PBGC in excess of such amount in the aggregate, or (iii) fail to comply with the minimum funding standards of ERISA and the Code with respect to any Plan.

ARTICLE X.  
EVENTS OF DEFAULT

10.1 Events of Default. Any of the following specified events shall constitute an Event of Default (each an "Event of Default"):

(a) Payments: the Borrowers shall (i) default in the payment when due (whether at maturity, on a date fixed for a scheduled repayment, on a date on which a required prepayment is to be made, upon acceleration or otherwise) of any principal of the Loans or any reimbursement obligation in respect of any Unpaid Drawing; or (ii) default, and such default shall continue for five (5) or more Business Days, in the payment when due of any interest on the Loans or any Fees or any other amounts owing hereunder or under any other Credit Document; or

(b) Representations, etc.: any representation, warranty or statement made by the Borrowers or any other Credit Party herein or in any other Credit Document or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or

(c) Certain Covenants: a Borrower shall default in the due performance or observance by it of any term, covenant or agreement contained in Sections 8.1, 8.2(ii), 8.10, 8.11, 8.12 or 8.13 or Article IX of this Agreement; or

(d) Other Covenants: a Borrower shall default in the due performance or observance by it of any term, covenant or agreement contained in this Agreement or any other Credit Document, other than those referred to in Section 10.1(a) or (b) or (c) above, and such default is not remedied within 30 days after the earlier of (i) an officer of a Borrower obtaining knowledge of such default or (ii) a Borrower receiving written notice of such default from the Administrative Agent or the Required Lenders (any such notice to be identified as a "notice of default" and to refer specifically to this paragraph); or

(e) Cross Default Under Other Agreements: a Borrower or any of its Subsidiaries shall (i) default in any payment with respect to any Indebtedness (other than the Obligations) in excess of \$10,000,000 in the aggregate, and such default shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, or (ii) default in the observance or performance of any agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto (and all grace periods applicable to such observance, performance or condition shall have expired), or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause any such Indebtedness to become due prior to its stated maturity; or any such Indebtedness of a Borrower or any of its Subsidiaries shall be declared to be due and payable, or shall be required to be prepaid (other than by a regularly scheduled required prepayment or redemption, prior to the stated maturity thereof); or (iii) without limitation of the foregoing clauses, a Borrower or any of its Subsidiaries shall default in any payment obligation under a Designated Hedge Agreement, and such default shall continue after the applicable grace period, if any, specified in such Designated Hedge Agreement or any other agreement or instrument relating thereto; or

(f) Invalidity of Loan Documents. any material provision of any Credit Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or under such Credit Document or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Credit Party or any other person contests in any manner the validity or enforceability of any provision of any Credit Document; or any Credit Party denies that it has any or further liability or obligation under any Credit Document, or purports to revoke, terminate or rescind any Credit Document; or

(g) Judgments: (i) one or more judgments, orders or decrees shall be entered against a Borrower and/or any of its Subsidiaries involving a liability (other than a liability covered by insurance, as to which the carrier has adequate claims paying ability and has not effectively reserved its rights) of \$10,000,000 or more in the aggregate for all such judgments, orders and decrees for a Borrowers and their Subsidiaries, and any such judgments or orders or decrees shall not have been vacated, discharged or stayed or bonded pending appeal within 30 days (or such longer period, not in excess of 60 days, during which enforcement thereof, and the filing of any judgment lien, is effectively stayed or prohibited) from the entry thereof; or (ii) one or more judgments, orders or decrees shall be entered against a Borrower and/or any of its Subsidiaries involving a required divestiture of any material properties, assets or business reasonably estimated to have a fair value in excess of \$10,000,000, and any such judgments, orders or decrees shall not have been vacated, discharged or stayed or bonded pending appeal within 30 days (or such longer period, not in excess of 60 days, during which enforcement thereof, and the filing of any judgment lien, is effectively stayed or prohibited) from the entry thereof; or

(h) Bankruptcy, etc.: any of the following shall occur:

(i) a Borrower or any of its Subsidiaries (the Borrowers and each of such other Subsidiary, each a "Principal Party") shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "Bankruptcy Code"); or

(ii) an involuntary case is commenced against any Principal Party under the Bankruptcy Code and the petition is not controverted within 10 days, or is not dismissed within 90 days, after commencement of the case; or

(iii) a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of any Principal Party; or

(iv) any Principal Party commences (including by way of applying for or consenting to the appointment of, or the taking of possession by, a rehabilitator, receiver, custodian, trustee, conservator or liquidator (collectively, a "conservator") of itself or all or any substantial portion of its property) any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, liquidation, rehabilitation, conservatorship or similar law of any jurisdiction whether now or hereafter in effect relating to such Principal Party; or

(v) any such proceeding of the type set forth in clause (iv) above is commenced against any Principal Party to the extent such proceeding is consented by such person or remains undismissed for a period of 90 days; or

(vi) any Principal Party is adjudicated insolvent or bankrupt; or

(vii) any order of relief or other order approving any such case or proceeding is entered; or

(viii) any Principal Party suffers any appointment of any conservator or the like for it or any substantial part of its property that continues undischarged or unstayed for a period of 90 days; or

(ix) any Principal Party makes a general assignment for the benefit of creditors or generally does not pay its debts as such debts become due; or

(x) any corporate (or similar organizational) action is taken by any Principal Party for the purpose of effecting any of the foregoing; or

(i) ERISA: (i) any of the events described in clauses (i) through (viii) of Section 8.1(e) shall have occurred; or (ii) there shall result from any such event or events the imposition of a Lien, the granting of a security interest, or a liability or a material risk of incurring a liability; and (iii) any such event or events or any such Lien, security interest or liability, individually, and/or in the aggregate, in the opinion of the Required Lenders, has had, or could reasonably be expected to have, a Material Adverse Effect; or

(j) Change of Control: there occurs a Change of Control.

10.2 Acceleration, etc. Upon the occurrence of any Event of Default, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent shall, upon the written request of the Required Lenders, by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent, or any Lender to enforce its claims against the Borrowers or any other Credit Party in any manner permitted under applicable law:

(a) declare the Total Commitment terminated, whereupon the Commitment of each Lender shall forthwith terminate immediately without any other notice of any kind;

(b) declare the principal of and any accrued interest in respect of all Loans, all Unpaid Drawings and all other Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers;

(c) terminate any Letter of Credit that may be terminated in accordance with its terms;

(d) direct the Borrowers to pay (and the Borrowers hereby agree that on receipt of such notice or upon the occurrence of an Event of Default with respect to the Borrowers under Section 10.1(h), it will pay) to the Administrative Agent an amount of cash equal to the aggregate Stated Amount of all Letters of Credit then outstanding (such amount to be held as security for the Borrower's (and any Subsidiary that is an account party) reimbursement obligations in respect thereof); and/or

(e) exercise any other right or remedy available under any of the Credit Documents or applicable law; provided that, if an Event of Default specified in Section 10.1(h) shall occur with respect to a Borrower, the result that would occur upon the giving of written notice by the Administrative Agent as specified in clauses (a) and/or (b) above shall occur automatically without the giving of any such notice.

10.3 Application of Liquidation Proceeds. All monies received by the Administrative Agent or any Lender from the exercise of remedies hereunder or under the other Credit Documents or under any other documents relating to this Agreement shall, unless otherwise required by applicable law, be applied as follows:

(a) first, to the payment of all expenses (to the extent not otherwise paid by the Borrower or any of the other Credit Parties) incurred by the Administrative Agent and the Lenders in connection with the exercise of such remedies, including, without limitation, all reasonable costs and expenses of collection, reasonable documented attorneys' fees, court costs and any foreclosure expenses;

(b) second, to the payment *pro rata* of interest then accrued on the outstanding Loans;

(c) third, to the payment *pro rata* of any fees then accrued and payable to the Administrative Agent, any Letter of Credit Issuer or any Lender under this Agreement in respect of the Loans or the Letter of Credit Outstandings;

(d) fourth, to the payment *pro rata* of (A) the principal balance then owing on the outstanding Loans, (B) the amounts then due under Designated Hedge Agreements to creditors of the Borrowers or any Subsidiary, subject to confirmation by the Administrative Agent of any calculations of termination or other payment amounts being made in accordance with normal industry practice, and (C) the Stated Amount of the Letter of Credit Outstandings (to be held and applied by the Administrative Agent as security for the reimbursement obligations in respect thereof);

(e) fifth, to the payment to the Lenders of any amounts then accrued and unpaid under Sections 2.6, 2.7, 3.5 and 5.4 hereof, and if such proceeds are insufficient to pay such amounts in full, to the payment of such amounts *pro rata*;

(f) sixth, to the payment *pro rata* of all other amounts owed by the Borrower to the Administrative Agent, to any Letter of Credit Issuer or any Lender under this Agreement or any other Credit Document, and to any counterparties under Designated Hedge Agreements of the Borrowers and their Subsidiaries, and if such proceeds are insufficient to pay such amounts in full, to the payment of such amounts *pro rata*; and

(g) finally, any remaining surplus after all of the Obligations have been paid in full, to the Borrowers or to whomsoever shall be lawfully entitled thereto.

#### ARTICLE XI. THE ADMINISTRATIVE AGENT

11.1 Appointment. Each Lender hereby irrevocably designates and appoints KeyBank as Administrative Agent to act as specified herein and in the other Credit Documents, and each such Lender hereby irrevocably authorizes KeyBank as the Administrative Agent for such Lender, to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. The Administrative Agent agrees to act as such upon the express conditions contained in this Article 11. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Credit Documents, nor any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Administrative Agent. The provisions of this Article 11 are solely for the benefit of the Administrative Agent, and the Lenders, and the Borrower and its Subsidiaries shall not have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, the Administrative Agent shall act solely as agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation or relationship of agency or trust with or for the Borrower or any of its Subsidiaries.

11.2 Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement or any other Credit Document by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care except to the extent otherwise required by Section 11.3.

11.3 Exculpatory Provisions. Neither the Administrative Agent nor any of its respective officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such person under or in connection with this Agreement or any other Credit Document (except for its or such person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by the Borrowers or any of their Subsidiaries or any of their respective officers contained in this Agreement, any other Credit Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Credit Document or for any failure of the Borrowers or any Subsidiary or any of their respective officers to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement, or to inspect the properties, books or records of the Borrowers or any of their Subsidiaries. The Administrative Agent shall not be responsible to any Lender for the effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of this Agreement or any Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statement or in any financial or other statements, instruments, reports, certificates or any other documents in connection herewith or therewith furnished or made by the Administrative Agent to the Lenders or by or on behalf of the Borrowers or any of their Subsidiaries to the Administrative Agent or any Lender or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the Loans or of the existence or possible existence of any Default or Event of Default.

11.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, e-mail or other electronic transmission, facsimile transmission, telex or teletype message, statement, order or other document or conversation believed by it, in good faith, to be genuine and correct and to have been signed, sent or made by the proper person or persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Borrowers or any of their Subsidiaries), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Credit Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Credit Documents in accordance with a request of the Required Lenders (or all of the Lenders, or all of the Lenders (other than any Defaulting Lender), as applicable, as to any matter that, pursuant to Section 12.11, can only be effectuated with the consent of all Lenders, or all Lenders (other than any Defaulting Lender), as the case may be), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

11.5 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent has received notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders, provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

11.6 Non-Reliance. Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates have made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Borrowers or any of their Subsidiaries, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Borrowers and their Subsidiaries and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Borrowers and their Subsidiaries. Except as specifically provided in this Agreement, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, assets, property, financial and other conditions, prospects or creditworthiness of the Borrowers or any of their Subsidiaries that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

11.7 Indemnification. The Lenders agree to indemnify the Administrative Agent and its Related Persons ratably according to their respective Loans and Commitment Percentages of the Unutilized Total Commitment, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, reasonable expenses or disbursements of any kind whatsoever that may at any time (including, without limitation, at any time following the payment of the Obligations) be imposed on, incurred by or asserted against the Administrative Agent or such Related Person in any way relating to or arising out of this Agreement or any other Credit Document, or any documents contemplated by or referred to herein or the transactions contemplated hereby or any action taken or omitted to be taken by the Administrative Agent or such Related Person under or in connection with any of the foregoing, but only to the extent that any of the foregoing is not paid by the Borrowers, provided that no Lender shall be liable to the Administrative Agent or any Related Person for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent resulting solely from the Administrative Agent's or such Related Person's gross negligence or willful misconduct. If any indemnity furnished to the Administrative Agent or any Related Person for any purpose shall, in the opinion of the Administrative Agent, be insufficient or become impaired, the Administrative Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. The agreements in this Section 11.7 shall survive the payment of all Obligations.

11.8 The Administrative Agent in Individual Capacity. The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrowers, its Subsidiaries and their Affiliates as though not acting as Administrative Agent hereunder. With respect to the Loans made by it and all Obligations owing to it, the Administrative Agent shall have the same rights and powers under this Agreement as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include the Administrative Agent in its individual capacity.

11.9 Successor Administrative Agent. The Administrative Agent may resign at any time upon not less than 30 days notice to the Lenders, each Letter of Credit Issuer and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of

the Lenders, appoint a successor Administrative Agent, provided that if the Administrative Agent shall notify the Borrowers and the Lenders that no such successor is willing to accept such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or any Letter of Credit Issuer under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Issuing Bank directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Credit Documents, the provisions of this Article and Section 12.1 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

11.10 No Reliance on Administrative Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Administrative Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with the Borrowers or any of their Subsidiaries, any of their respective Affiliates or agents, this Agreement, the Security Documents or the transactions hereunder: (a) any identity verification procedures, (b) any record keeping, (c) any comparisons with government lists, (d) any customer notices or (e) any other procedures required under the CIP Regulations or such other laws.

11.11 USA Patriot Act. Each Lender or assignee or participant of a Lender that is not organized under the laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA Patriot Act and the applicable regulations because it is both (a) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (b) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to the Administrative Agent the certification, or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the USA Patriot Act and the applicable regulations: (i) within 10 days after the Closing Date, and (ii) at such other times as are required under the USA Patriot Act.

11.12 Other Agents. Any Lender identified herein as a Co-Agent, Syndication Agent, Documentation Agent, Managing Agent, Manager, Lead Arranger, Arranger or any other corresponding title, other than "Administrative Agent," shall have no right, power, obligation, liability, responsibility or duty under this Agreement or any other Credit Document except those applicable to all Lenders as such. Each Lender acknowledges that it has not relied, and will not rely, on any Lender so identified in deciding to enter into this Agreement or in taking or not taking any action hereunder.

## ARTICLE XII. MISCELLANEOUS

### 12.1 Payment of Expenses etc.

(a) Whether or not the transactions contemplated hereby are consummated, the Borrowers agree to pay (or reimburse the Administrative Agent for) all reasonable out-of-pocket costs and expenses of the Administrative Agent in connection with the negotiation, preparation, syndication, administration and execution and delivery of the Credit Documents and the documents and instruments referred to therein and the syndication of the Commitments, including, without limitation, the reasonable fees and disbursements of counsel to the Administrative Agent.

(b) The Borrowers agree to pay (or reimburse the Administrative Agent, the Lenders and their Affiliates for) all reasonable out-of-pocket costs and expenses of the Administrative Agent, the Lenders and their Affiliates in connection with any amendment, waiver, consent or other modification of or relating to any of the Credit Documents, including, without limitation, the reasonable fees and disbursements of counsel to the Administrative Agent.

(c) The Borrowers agree to pay (or reimburse the Administrative Agent, the Lenders and their Affiliates for) all reasonable out-of-pocket costs and expenses of the Administrative Agent, the Lenders and their Affiliates in connection with the enforcement of any of the Credit Documents or the other documents and instruments referred to therein, including, without limitation, the reasonable fees and disbursements of counsel to the Administrative Agent.

(d) Without limitation of the preceding Section 12.1(c), in the event of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of the Borrower or any of its Subsidiaries, the Borrowers agree to pay all costs of collection and defense, including reasonable attorneys' fees in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes.

(e) The Borrowers agree to pay and hold the Administrative Agent and each of the Lenders harmless from and against any and all present and future stamp and other similar taxes with respect to the foregoing matters and save the Administrative Agent and each of the Lenders harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to any such indemnified person) to pay such taxes.

(f) The Borrowers agree to indemnify the Administrative Agent, each Lender, and their respective Related Parties (collectively, the "Indemnitees") from and hold each of them harmless against any and all losses, liabilities, claims, damages or expenses reasonably incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of

(i) any investigation, litigation or other proceeding (whether or not any Lender is a party thereto) related to the entering into and/or performance of any Credit Document or the use of the proceeds of any Loans hereunder or the consummation of any transactions contemplated in any Credit Document, or

(ii) the actual or alleged presence of Hazardous Materials in the air, surface water or groundwater or on the surface or subsurface of any Real Property owned, leased or at any time operated by any Borrower or any of its Subsidiaries, the release, generation, storage, transportation, handling or disposal of Hazardous Materials at any location, whether or not owned or operated by any Borrower or any of its Subsidiaries, if such Borrower or any such Subsidiary could have or is alleged to have any responsibility in respect thereof, the

non-compliance of any such Real Property with foreign, federal, state and local laws, regulations and ordinances (including applicable permits thereunder) applicable thereto, or any Environmental Claim asserted against such Borrower or any of its Subsidiaries, in respect of any such Real Property, including, in each case, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding (but excluding any such losses, liabilities, claims, damages or expenses to the extent incurred by reason of the gross negligence or willful misconduct of the person to be indemnified or of any other Indemnitee who is such person or an Affiliate of such person). To the extent that the undertaking to indemnify, pay or hold harmless any person set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Borrowers shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities that is permissible under applicable law.

12.2 Right of Setoff. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to the Borrowers or to any other person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) and any other Indebtedness at any time held or owing by such Lender (including, without limitation, by branches, agencies and Affiliates of such Lender wherever located) to or for the credit or the account of any Borrower against and on account of the Obligations and liabilities of the Borrowers to such Lender under this Agreement or under any of the other Credit Documents, and all other claims of any nature or description arising out of or connected with this Agreement or any other Credit Document, irrespective of whether or not such Lender shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

### 12.3 Notices.

(a) Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subparagraph (c) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows:

(i) if to the Borrowers, at 3556 Lakeshore Road, Buffalo, New York 14219, Attention: Chief Financial Officer (Telecopier No. (716) 826-1589; Telephone No. (716) 826-6500);

(ii) if to any Credit Party other than the Borrower, to it c/o of Gibraltar Industries, Inc., 3556 Lakeshore Road, Buffalo, New York 14219, Attention: Chief Financial Officer (Telecopier No. (716) 826-1589; Telephone No. (716) 826-6500);

(iii) if to the Administrative Agent, to KeyBank National Association at KeyCenter, 127 Public Square, Cleveland, Ohio 44114, Attention: Laurie A. Landes (Telecopier No. (216) 689-0412; Telephone No. (216) 689-5926; email: laurie\_a\_landes@keybank.com, cc: lisa\_borders-lathan@keybank.com; and

(iv) if to a Lender, to it at its address (or telecopier number) set forth on Schedule 1 hereto or, in the case of any Lender that becomes a party to this Agreement by way of assignment under Section 12.4 of this Agreement, to it at the address set forth in the Assignment Agreement to which it is a party;

(b) Receipt of Notices. Notices and communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent and receipt has been confirmed by telephone. Notices delivered through electronic communications to the extent provided in subparagraph (c) below, shall be effective as provided in said subparagraph (c).

(c) Electronic Communications. Notices and other communications to the Administrative Agent, a Letter of Credit Issuer or any Lender hereunder and required to be delivered pursuant to Sections 8.1(a),(b),(c),(g),(h) and (j) may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent. The Administrative Agent or the Borrowers may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(d) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to each of the other parties hereto.

### 12.4 Benefit of Agreement.

(a) Successors and Assigns Generally. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns, provided that the Borrowers may not assign or transfer any of its rights or obligations hereunder without the prior written consent of all the Lenders (other than any Defaulting Lender), and, provided, further, that any assignment by a Lender of its rights and obligations hereunder shall be effected in accordance with Section 12.4(c).

(b) Participations. Notwithstanding the foregoing, each Lender may at any time grant participations in any of its rights hereunder or under any of the Notes to any person (other than a natural person or any Borrower or any of its Affiliates), provided that in the case of any such participation,

(i) the participant shall not have any rights under this Agreement or any of the other Credit Documents, including rights of consent, approval or waiver (the participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the participant relating thereto),

(ii) such Lender's obligations under this Agreement (including, without limitation, its Commitment hereunder) shall remain unchanged,

(iii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations,

(iv) such Lender shall remain the holder of any Note for all purposes of this Agreement, and

(v) the Borrower, the Administrative Agent, and the other Lenders shall continue to deal solely and directly with the selling Lender in connection with such Lender's rights and obligations under this Agreement, and all amounts payable by the Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that the participant shall be entitled to the benefits of Sections 2.6 and 2.7 of this Agreement to the extent that such Lender would be entitled to such benefits if the participation had not been entered into or sold,

and, provided further, that no Lender shall transfer, grant or sell any participation under which the participant shall have rights to approve any amendment to or waiver of this Agreement or any other Credit Document except to the extent such amendment or waiver would (w) extend the final scheduled maturity of the Loans in which such participant is participating, or reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with a waiver of the applicability of any post-default increase in interest rates), or reduce the principal amount thereof, or increase such participant's participating interest in any Commitment over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default shall not constitute a change in the terms of any such Commitment), (x) release all or any substantial portion of the Collateral, or release any guarantor from its guaranty of any of the Obligations, except strictly in accordance with the terms of the Credit Documents, or (y) consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement.

(c) Assignments by Lenders. Any Lender may assign all, or if less than all, a fixed portion, of its Loans and/or Commitment and its rights and obligations hereunder to one or more Eligible Assignees (so long as after giving effect to each such assignment, such Eligible Assignee's Commitment shall not be less than \$5,000,000), each of which shall become a party to this Agreement as a Lender by execution of an Assignment Agreement, provided that

(i) except in the case (x) of an assignment of the entire remaining amount of the assigning Lender's Loans and/or Commitment or (y) an assignment to another Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender, the aggregate amount of the Commitment (which for this purpose includes the Loans outstanding thereunder), shall not be less than \$5,000,000,

(ii) in the case of any assignment to an Eligible Assignee at the time of any such assignment the Lender Register shall be deemed modified to reflect the Commitments of such new Lender and of the existing Lenders,

(iii) upon surrender of the old Notes, if any, upon request of the new Lender, new Notes will be issued, at the Borrowers' expense, to such new Lender and to the assigning Lender, such new Notes to be in conformity with the requirements of Section 2.4(d) (with appropriate modifications) to the extent needed to reflect the revised Commitments,

(iv) unless waived by the Administrative Agent, the Administrative Agent shall receive at the time of each such assignment, from the assigning or assignee Lender, the payment of a non-refundable assignment fee of \$3,500,

and, provided further, that such transfer or assignment will not be effective until the Assignment Agreement in respect thereof is recorded by the Administrative Agent on the Lender Register maintained by it as provided herein.

To the extent of any assignment pursuant to this Section 12.4(c) the assigning Lender shall be relieved of its obligations hereunder with respect to its assigned Commitments.

At the time of each assignment pursuant to this Section 12.4(c) to a person that is not already a Lender hereunder and that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) for Federal income tax purposes, the respective assignee Lender shall provide to the Borrower and the Administrative Agent the appropriate Internal Revenue Service Forms (and, if applicable an Exemption Certificate) described in Section 5.4(b). To the extent that an assignment of all or any portion of a Lender's Commitment and related outstanding Obligations pursuant to this Section 12.4(c) would, at the time of such assignment, result in increased costs under Section 2.6 from those being charged by the respective assigning Lender prior to such assignment, then the Borrowers shall not be obligated to pay such increased costs (although the Borrowers shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective assignment).

Nothing in this Section 12.4(c) shall prevent or prohibit (i) any Lender that is a bank, trust company or other financial institution from pledging its Notes or Loans to a Federal Reserve Bank in support of borrowings made by such Lender from such Federal Reserve Bank, or (ii) any Lender that is a trust, limited liability company, partnership or other investment company from pledging its Notes or Loans to a trustee or agent for the benefit of holders of certificates or debt securities issued by it. No such pledge, or any assignment pursuant to or in lieu of an enforcement of such a pledge, shall relieve the transferor Lender from its obligations hereunder.

(d) No SEC Registration or Blue Sky Compliance. Notwithstanding any other provisions of this Section 12.4, no transfer or assignment of the interests or obligations of any Lender hereunder or any grant of participation therein shall be permitted if such transfer, assignment or grant would require the Borrower to file a registration statement with the SEC or to qualify the Loans under the "Blue Sky" laws of any State.

(e) Representations of Lenders. Each Lender initially party to this Agreement hereby represents, and each person that became a Lender pursuant to an assignment permitted by this Section 12.4 will, upon its becoming party to this Agreement, represent that it is a commercial lender, other financial institution or other "accredited" investor (as defined in SEC Regulation D) that makes or acquires loans in the ordinary course of its business and that it will make or acquire Loans for its own account in the ordinary course of such business, provided that subject to the preceding Sections 12.4(b) and (c), the disposition of any promissory notes or other evidences of or interests in Indebtedness held by such Lender shall at all times be within its exclusive control.

12.5 No Waiver; Remedies Cumulative. No failure or delay on the part of the Administrative Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrowers and the Administrative Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. No notice to or demand on the Borrowers in any case shall entitle the Borrowers to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent or the Lenders to any other or further action in any circumstances without notice or demand. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, any Lender or the Letter of Credit Issuer may have had notice or knowledge of such Default or Event of Default at the time. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the Administrative Agent or any Lender would otherwise have.

12.6 Payments Pro Rata; Sharing of Setoffs, etc.



(a) The Administrative Agent agrees that promptly after its receipt of each payment from or on behalf of the Borrowers in respect of any Obligations, except as set forth in Section 10.3, it shall distribute such payment to the Lenders (other than any Lender that has expressly waived in writing its right to receive its *pro rata* share thereof) *pro rata* based upon their respective shares, if any, of the Obligations with respect to which such payment was received. As to any such payment received by the Administrative Agent prior to 1:00 P.M. (local time at the Payment Office) in funds that are immediately available on such day, the Administrative Agent will use all reasonable efforts to distribute such payment in immediately available funds on the same day to the Lenders as aforesaid.

(b) Each of the Lenders agrees that, if it should receive any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under the Credit Documents, or otherwise) that is applicable to the payment of the principal of, or interest on, the Loans or Fees, of a sum that with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such Obligation then owed and due to such Lender bears to the total of such Obligation then owed and due to all of the Lenders immediately prior to such receipt, then such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations to such Lenders in such amount as shall result in a proportional participation by all of the Lenders in such amount, provided that (i) if all or any portion of such excess amount is thereafter recovered from such Lender, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest, and (ii) the provisions of this Section 12.6(b) shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement, or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Letters of Credit to any assignee or participant pursuant to Section 12.4, other than to the Borrowers or any Subsidiary or Affiliate thereof (as to which the provisions of this Section 12.6(b) shall apply). The Borrowers consent to the foregoing and agree, to the extent they may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrowers rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the applicable Borrower in the amount of such participation.

(c) Notwithstanding anything to the contrary contained herein, the provisions of the preceding Sections 12.6(a) and (b) shall be subject to the express provisions of this Agreement that require, or permit, differing payments to be made to Lenders that are not Defaulting Lenders, as opposed to Defaulting Lenders.

(d) If any Lender shall fail to make any payment required to be made by it to the Administrative Agent pursuant to Section 2.3(b), 2.8 or 3.4(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision of this Agreement), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations to the Administrative Agent under such Sections until all such unsatisfied obligations are fully paid.

#### 12.7 Appointment of Borrower Representative.

(a) Each Borrower hereby designates Gibraltar Industries, Inc. as the Borrower's Representative to act on behalf of such Borrower as a representative and agent to obtain Loans and Swingline Loans and execute and deliver documents hereunder, the proceeds of which Loans shall be available to each Borrower for the same uses as set forth in Section 7.6 hereof. As the disclosed principal for its agent, each Borrower shall be obligated to each Lender and Swingline Lender, as applicable, on account of Loans and Swingline Loans as if made directly by such Lender or Swingline Lender to that Borrower, notwithstanding the manner by which such loans and advances are recorded on the books and records of Borrower Representative and of any other Borrower.

(b) The proceeds of each Loan and Swingline Loan shall be deposited by the Administrative Agent or Swingline Lender, as applicable, in the respective accounts of the Borrower as indicated by the Borrower Representative. Neither the Administrative Agent nor any other Lender or Swingline Lender shall have any obligation as to the application of such proceeds.

#### 12.8 Governing Law; Submission to Jurisdiction; Venue; Waiver of Jury Trial.

(a) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK. TO THE FULLEST EXTENT PERMITTED BY LAW, THE BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK GOVERNS THIS AGREEMENT OR ANY OF THE OTHER CREDIT DOCUMENTS. Any legal action or proceeding with respect to this Agreement or any other Credit Document may be brought in the Supreme Court of the State of New York in Erie County, or of the United States for the Western District of New York, and, by execution and delivery of this Agreement, the Borrower hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. The Borrowers hereby further irrevocably consent to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Borrower Representative at the address for notices pursuant to Section 12.3. Nothing herein shall affect the right of the Administrative Agent or any Lender to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Borrowers in any other jurisdiction.

(b) The Borrowers hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement or any other Credit Document brought in the courts referred to in Section 12.7(a) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER CREDIT DOCUMENTS (INCLUDING, WITHOUT LIMITATION, ANY AMENDMENTS, WAIVERS OR OTHER MODIFICATIONS RELATING TO ANY OF THE FOREGOING), OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY HERETO HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

12.9 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same agreement. A set of counterparts executed by all the parties hereto shall be lodged with the Borrower Representative and the Administrative Agent.

12.10 Integration. This Agreement, the other Credit Documents and any separate letter agreements with respect to fees payable to the Administrative Agent, for its own account and benefit and/or for the account, benefit of, and distribution to, the Lenders, constitute the entire contract

among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof or thereof.

12.11 Headings Descriptive. The headings of the several Sections and other portions of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

12.12 Amendment or Waiver.

(a) Neither this Agreement nor any other Credit Document, nor any terms hereof or thereof, may be amended, changed, waived or otherwise modified unless such amendment, change, waiver or other modification is in writing and signed by the Borrower Representative and the Administrative Agent (with the written consent of the Required Lenders), provided that:

(i) no change in, or waiver or other modification otherwise affecting, the amount or time of any scheduled reduction in the Total Commitment provided for in Section 4.3(a) to which a Lender shall be entitled, shall be made without the written consent of each Lender;

(ii) no change, waiver or other modification shall:

(A) increase the Commitment of any Lender hereunder, without the written consent of such Lender;

(B) extend or postpone the Facility Termination Date or the maturity date provided for herein that is applicable to any Loan of any Lender, extend or postpone the expiration date of any Letter of Credit as to which such Lender is a Participant pursuant to Section 3.4 beyond the latest expiration date for a Letter of Credit provided for herein, or extend or postpone any scheduled expiration or termination date provided for herein that is applicable to a Commitment of any Lender, without the written consent of such Lender;

(C) reduce the principal amount of any Loan made by any Lender, or reduce the rate or extend the time of payment of, or excuse the payment of, interest thereon (other than as a result of waiving the applicability of any post-default increase in interest rates), without the written consent of such Lender;

(D) reduce the amount of any Unpaid Drawing as to which any Lender is a Participant as provided in Section 3.4, or reduce the rate or extend the time of payment of, or excuse the payment of, interest thereon (other than as a result of waiving the applicability of any post-default increase in interest rates), without the written consent of such Lender;

(E) reduce the rate or extend the time of payment of, or excuse the payment of, any Fees to which any Lender is entitled hereunder, without the written consent of such Lender; or

(F) increase the Total Commitment (except as provided in Section 4.4); and

(iii) changes, waivers or other modifications or terminations in connection with distributions or sales permitted pursuant to Section 9.2(c) and which release Collateral having an aggregate value in any of the Borrowers' fiscal years not in excess of five percent (5%) of the Borrowers' Consolidated Net Worth may be approved by the Administrative Agent without the consent of any other Lenders,

(iv) no change, waiver or other modification or termination shall, without the written consent of each Lender (other than a Defaulting Lender) affected thereby,

(A) release any Borrower from any obligations as a guarantor of its Subsidiaries' obligations under any Credit Document;

(B) release any Credit Party from the Subsidiary Guaranty, except in accordance with a transaction permitted under this Agreement;

(C) amend, modify or waive any provision of this Section 12.12, Section 10.3, or Section 12.7 hereof, or any other provision of any of the Credit Documents pursuant to which the consent or approval of all Lenders, or a number or specified percentage or other required grouping of Lenders or Lenders having Commitments, is by the terms of such provision explicitly required;

(D) reduce the percentage specified in, or otherwise modify, the definition of Required Lenders; or

(E) consent to the assignment or transfer by any Borrower of any of its rights and obligations under this Agreement.

Any waiver, consent, amendment or other modification with respect to this Agreement given or made in accordance with this Section 12.12 shall be effective only in the specific instance and for the specific purpose for which it was given or made.

(b) No provision of Section 3 or 11 may be amended without the consent of (x) any Letter of Credit Issuer adversely affected thereby or (y) the Administrative Agent, respectively.

(c) To the extent the Required Lenders (or all of the Lenders, or all of the Lenders (other than any Defaulting Lender), as applicable, as shall be required by this Section 12.11) waive the provisions of Section 9.2 hereof with respect to the sale, transfer or other disposition of any Collateral, or any Collateral is sold, transferred or disposed of as permitted by Section 9.2 hereof, (i) such Collateral shall be sold, transferred or disposed of free and clear of the Liens created by the respective Security Documents; (ii) if such Collateral includes all of the capital stock of a Subsidiary that is a party to the Subsidiary Guaranty or whose stock is pledged pursuant to the Pledge Agreement, such capital stock shall be released from the Pledge Agreement and such Subsidiary shall be released from the Subsidiary Guaranty; and (iii) the Administrative Agent shall be authorized to take actions deemed appropriate by them in order to effectuate the foregoing.

12.13 Survival of Indemnities. All indemnities set forth herein including, without limitation, in Section 2.6, 2.7, 3.5, 5.4, 11.7 or 12.1 shall survive the execution and delivery of this Agreement and the making and repayment of Loans.

12.14 Domicile of Loans. Each Lender may transfer and carry its Loans at, to or for the account of any branch office, subsidiary or affiliate of such Lender, provided that the Borrower shall not be responsible for costs arising under Section 2.6 resulting from any such transfer to the extent not otherwise applicable to such Lender prior to such transfer.

12.15 Lender Register. The Borrowers hereby designate the Administrative Agent to serve as its agent, solely for purposes of this Section 12.15, to maintain a register (the "Lender Register") on or in which it will record the names and addresses of the Lenders, and the Commitments from time to time of each of the Lenders, the Loans made to the Borrowers by each of the Lenders and each repayment and prepayment in respect of the principal amount of such Loans of each such Lender. Failure to make any such recordation, or (absent manifest error) any error in such recordation, shall not affect the Borrowers' obligations in respect of such Loans. With respect to any Lender, the transfer of the Commitment of such Lender and the rights to the principal of, and interest on, any Loan made pursuant to such Commitment shall not be effective until such transfer is recorded on the Lender Register maintained by the Administrative Agent with respect to ownership of such Commitment and Loans and prior to such recordation all amounts owing to the transferor with respect to such Commitment and Loans shall remain owing to the transferor. The registration of assignment or transfer of all or part of any Commitments and Loans shall be recorded by the Administrative Agent on the Lender Register only upon the acceptance by the Administrative Agent of a properly executed and delivered Assignment Agreement pursuant to Section 12.4(c). The Borrowers agree to indemnify the Administrative Agent from and against any and all losses, claims, damages and liabilities of whatsoever nature that may be imposed on, asserted against or incurred by the Administrative Agent in performing its duties under this Section 12.15, except for losses, claims, damages and liabilities arising from the Agent's gross negligence or willful misconduct. The Lender Register shall be available for inspection by the Borrowers or any Lender at any reasonable time and from time to time upon reasonable prior notice.

12.16 Limitations on Liability of the Letter of Credit Issuers. The Borrowers assume all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letters of Credit. Neither any Letter of Credit Issuer nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by a Letter of Credit Issuer against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit. In furtherance and not in limitation of the foregoing, a Letter of Credit Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation.

12.17 General Limitation of Liability. No claim may be made by the Borrowers, any Lender, the Administrative Agent, any Letter of Credit Issuer or any other person against the Administrative Agent, any Letter of Credit Issuer, or any other Lender or the Affiliates, directors, officers, employees, attorneys or agents of any of them for any damages other than actual compensatory damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any of the other Credit Documents, or any act, omission or event occurring in connection therewith; and each of the Borrowers, each Lender, the Administrative Agent and each Letter of Credit Issuer hereby, to the fullest extent permitted under applicable law, waives, releases and agrees not to sue or counterclaim upon any such claim for any special, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

12.18 No Duty. All attorneys, accountants, appraisers, consultants and other professional persons (including the firms or other entities on behalf of which any such person may act) retained by the Administrative Agent or any Lender with respect to the transactions contemplated by the Credit Documents shall have the right to act exclusively in the interest of the Administrative Agent or such Lender, as the case may be, and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to the Borrowers, to any of their Subsidiaries, or to any other person, with respect to any matters within the scope of such representation or related to their activities in connection with such representation. The Borrowers agree, on behalf of themselves and their Subsidiaries, not to assert any claim or counterclaim against any such persons with regard to such matters, all such claims and counterclaims, now existing or hereafter arising, whether known or unknown, foreseen or unforeseeable, being hereby waived, released and forever discharged.

12.19 Lenders and Agent Not Fiduciary to Borrower, etc. The relationship among the Borrowers and their Subsidiaries, on the one hand, and the Administrative Agent, each Letter of Credit Issuer and the Lenders, on the other hand, is solely that of debtor and creditor, and the Administrative Agent, each Letter of Credit Issuer and the Lenders have no fiduciary or other special relationship with any Borrower and its Subsidiaries, and no term or provision of any Credit Document, no course of dealing, no written or oral communication, or other action, shall be construed so as to deem such relationship to be other than that of debtor and creditor.

12.20 Survival of Representations and Warranties. All representations and warranties herein shall survive the making of Loans and the issuance of Letters of Credit hereunder, the execution and delivery of this Agreement, the Notes and the other documents the forms of which are attached as Exhibits hereto, the issue and delivery of the Notes, any disposition thereof by any holder thereof, and any investigation made by the Administrative Agent or any Lender or any other holder of any of the Notes or on its behalf. All statements contained in any certificate or other document delivered to the Administrative Agent or any Lender or any holder of any Notes by or on behalf of the Borrowers or of their Subsidiaries pursuant hereto or otherwise specifically for use in connection with the transactions contemplated hereby shall constitute representations and warranties by the Borrowers hereunder, made as of the respective dates specified therein or, if no date is specified, as of the respective dates furnished to the Administrative Agent or any Lender.

12.21 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

12.22 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action, event, condition or circumstance is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations or restrictions of, another covenant, shall not avoid the occurrence of a Default or an Event of Default if such action is taken or event, condition or circumstance exists.

12.23 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Base Rate to the date of repayment, shall have been received by such Lender.

12.24 USA Patriot Act. Each Lender subject to the USA Patriot Act hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the USA Patriot Act.

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

GIBRALTAR INDUSTRIES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KEYBANK NATIONAL ASSOCIATION,  
as Lender, Administrative Agent, Swingline  
Lender, Letter of Credit Issuer, Lead Arranger  
and Book Runner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HARRIS TRUST & SAVINGS BANK, as  
Lender and Co-Documentation Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MANUFACTURERS AND TRADERS TRUST  
COMPANY, as Lender and Co-Documentation  
Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BANK OF AMERICA, as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMERICA BANK, as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GIBRALTAR STEEL CORPORATION OF  
NEW YORK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

JPMORGAN CHASE BANK, N.A., as Lender,  
Letter of Credit Issuer and Syndication Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HSBC BANK USA, NATIONAL  
ASSOCIATION, as Lender and  
Co-Documentation Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

US BANK, NATIONAL ASSOCIATION, as a  
Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NATIONAL CITY BANK OF  
PENNSYLVANIA, as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBITS  
AND  
SCHEDULES

Exhibit A  
NOTE

\$ \_\_\_\_\_  
York

Buffalo, New

As of April 1, 2005

FOR VALUE RECEIVED, the undersigned, GIBRALTAR INDUSTRIES, INC. and GIBRALTAR STEEL CORPORATION OF NEW YORK (collectively, "Borrowers"), jointly and severally, hereby unconditionally promise to pay on the Facility Termination Date (as defined in the Credit Agreement hereinafter referred to) to the order of \_\_\_\_\_ ("Lender"), the principal sum equal to the lesser of (a) \$ \_\_\_\_\_ or (b) the aggregate unpaid principal amount of all Loans made by the Lender to the Borrowers pursuant to the Credit Agreement (as defined below), together with interest at the rate and on the terms as specified herein. "Credit Agreement" means the Credit Agreement dated as of April 1, 2005 among the Borrowers, KeyBank National Association as Administrative Agent, Swingline Lender, Letter of Credit Issuer, Lead Arranger and Book Runner, JPMorgan Chase Bank, N.A. as Syndication Agent and Letter of Credit Issuer, Harris Trust & Savings Bank as Co-Documentation Agent, HSBC Bank USA, National Association as Co-Documentation Agent, Manufacturers and Traders Trust Company as Co-Documentation Agent and the Lenders named therein, as the same may be amended from time to time. All capitalized terms used in this Note and not otherwise defined shall have the meanings set forth in the Credit Agreement.

This Note shall bear interest at the rates and on the dates determined in accordance with Sections 2.2 and 2.5 of the Credit Agreement.

Payments of both principal and interest are to be made in lawful money of the United States of America in immediately available funds at the Payment Office.

The Lender is authorized to inscribe on the schedule attached hereto and constituting a part hereof and any continuation thereof ("Schedule"), the date of the making of each Loan or conversion of any portion of this Note to a Base Rate Loan or a Eurodollar Loan, the date of the continuation of any Eurodollar Loan, the amount of each Loan, its character as a Base Rate Loan or a Eurodollar Loan, the dates on which each Interest Period shall begin and end, each payment of principal and the aggregate unpaid balance of this Note. Each entry on the Schedule shall be prima facie evidence of the facts so set forth. No failure by the Lender to make, and no error by the Lender in making, any inscription on the Schedule shall affect the obligation of the Borrowers to repay the full principal amount of the Loans made by the Lender to the Borrowers or the obligation of the Borrowers to pay interest thereon at the agreed upon rate.

No failure by the Lender to exercise, and no delay in exercising, any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Administrative Agent or the Lender of any right or power hereunder preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Lender, or of the Administrative Agent for the benefit of the Lender, as herein specified are cumulative and not exclusive of any other rights or remedies, including those set forth in the Credit Agreement and the Subsidiary Guaranty.

Upon the happening of one or more Events of Default as described in Section 10.1 of the Credit Agreement, this Note may be accelerated in accordance with Section 10.2 of the Credit Agreement.

The Borrowers hereby waive diligence, presentment, protest and demand, and also notice of protest, demand, dishonor and nonpayment of this Note.

This Note is one of the Notes referred to in the Credit Agreement, to which reference is hereby made with respect to prepayment and rights of acceleration of the principal hereof on the occurrence of certain events.

This Note shall be construed under, and governed by, the laws of the State of New York, without regard to its conflict of laws rules which would make the laws of another jurisdiction applicable.

GIBRALTAR INDUSTRIES, INC.

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

Title:

GIBRALTAR STEEL CORPORATION OF NEW

YORK

By:

Name:  
Title:

STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2005, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 )SS.:  
COUNTY OF ERIE )

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2005, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**SCHEDULE  
LOANS**

DATE LOAN MADE	AMOUNT OF LOAN	BASIS OF INTEREST RATE (BASE RATE OR EURO-DOLLAR RATE)	INTEREST PERIOD DATES	AMOUNT OF PRINCIPAL PAID OR PREPAID	AGGREGATE UNPAID PRINCIPAL


**Exhibit B**

**NOTICE OF  
BORROWING, CONTINUATION OR CONVERSION**

The undersigned hereby certifies to KeyBank National Association, as Agent for the benefit of the Lenders in accordance with the terms of a Credit Agreement among the undersigned, KeyBank National Association, as Administrative Agent, Swingline Lender, Letter of Credit Issuer, Lead Arranger and Bookrunner, JPMorgan Chase Bank, N.A. as Syndication Agent and Letter of Credit Issuer, Harris Trust and Savings Bank, as Co-Documentation Agent, HSBC Bank USA, National Association, as Co Documentation Agent, Manufacturers and Traders Trust Company, as Co-Documentation Agent and the Lenders named therein, dated as of April 1, 2005, as the same from time to time may be amended, supplemented or otherwise modified, that:

The undersigned requests or has requested by telephone or facsimile notice a:

**(Check One)**

- new Borrowing
- conversion
- continuation

of a

**(Check One)**

- Eurodollar Loan
- Base Rate Loan
- Swingline Loan

to a

**(Check One)**

- Eurodollar Loan
- Base Rate Loan
- Swingline Loan

in the amount of \$\_\_\_\_\_ for an Interest Period, if applicable, of

**(Check One)**

**Interest Period**

- one month
- two months
- three months
- six months

The proposed loan, conversion/continuation is to be made on the 1st day of April, 2005.

WITNESS the signature of the undersigned authorized signatory this 31st day of March, 2005.

GIBRALTAR INDUSTRIES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit C-1  
GUARANTY  
(Unlimited Amount)**

This Guaranty is granted by the undersigned and the parties which from time to time become a party hereto (each individually a "Guarantor" and collectively, the "Guarantors") to KEYBANK NATIONAL ASSOCIATION, having an office located at KeyCenter, 127 Public Square, Cleveland, Ohio 44114 ("Business Office"), as administrative agent for the Lenders (as defined below) (the "Agent").

Recitals. Gibraltar Industries, Inc., a Delaware corporation and Gibraltar Steel Corporation of New York, a New York corporation (each individually a "Borrower" and collectively, the "Borrowers") have obtained or desire or may desire at some time and/or from time to time to obtain financial accommodation from the Lenders, and each Guarantor represents that it is financially interested in the affairs of the Borrowers and expects to derive advantage from each and every such accommodation.

Consideration. To induce the Lenders, at their option, in accordance with the Credit Agreement (as defined below), at any time or from time to time, to extend financial accommodation, with or without security, to or for the account of the Borrowers, or in respect of which the Borrowers may be liable in any capacity (the term "financial accommodation" including, without limitation, extension of loans, credit or accommodation, issuance or confirmation of letters of credit or creation of acceptances, or discount or purchase of, or loans on, accounts, leases, instruments, securities, documents, chattel paper and other security arrangements or other property, or entering into any foreign exchange, precious metals or other contract or agreement between the Borrowers and the Agent or the Lenders), the Guarantors hereby agree as follows:

Guaranty. The Guarantors, jointly and severally, absolutely and unconditionally guarantee to the Agent, for the benefit of the Lenders and itself as Agent, that the Borrowers will promptly perform and observe every agreement and condition contained in that certain Credit Agreement dated of even date herewith among the Borrowers and the Agent and the lending institutions which from time to time become a party thereto (individually a "Lender" and collectively the "Lenders"), and as the same may be amended from time to time (the "Credit Agreement") and the documents executed in connection therewith now or hereafter existing, arising directly between the Borrowers or the Guarantors and the Lenders or Agent or acquired outright, conditionally, as a participation or as collateral security from another by the Lenders or Agent, absolute or contingent, joint and/or several, secured or unsecured, due or not due, contractual or tortuous, liquidated or unliquidated, arising by operation of law or otherwise, direct or indirect (a "Credit Arrangement") to be performed or observed by the Borrowers, that all sums stated to be payable in, or which become payable under the Credit Agreement or any Credit Arrangement, will be promptly paid in full when due, whether at maturity or earlier by reason of acceleration or otherwise, or, if now due, when payment thereof shall be demanded by Agent, together with interest and any and all legal and other costs and expenses paid or incurred in connection therewith by Agent and/or the Lenders (collectively, the "Guaranteed Obligations"), and, in case of one or more extensions of time of payment or renewals, in whole or in part, under the Credit Agreement or of any Credit Arrangement or obligation, that the same will be promptly paid or performed when due, according to each such extension or renewal, whether at maturity or earlier by reason of acceleration or otherwise. The Guarantors agree that, as between the Guarantors and Agent, the Guaranteed Obligations may be declared to be due and payable for purposes of this Guaranty notwithstanding any stay, injunction or other prohibition which may prevent, delay or vitiate any such declaration as against any Borrower and that, in the event of any such declaration (or attempted declaration), the Guaranteed Obligations (whether or not due and payable by the Borrowers) shall forthwith become due and payable by the Guarantors for purposes of this Guaranty. The Guarantors further guarantee that all payments made by the Borrowers to Agent for the benefit of the Lenders or itself as Agent of any Guaranteed Obligation will, when made, be final and agrees that if any such payment is recovered from, or repaid by, Agent or any of the Lenders in whole or in part by reason of any bankruptcy, insolvency or similar proceeding instituted by or against any Borrower, this Guaranty shall continue to be fully applicable to such obligation to the same extent as though the payment so recovered or repaid had never been originally made on such obligation.

The Guarantors, and by their acceptance of this Guaranty, the Agent and each other Lender, hereby confirm that it is the intention of all such parties that this Guaranty not constitute a fraudulent transfer or conveyance for purposes of any Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal, state or foreign law which may be applicable to this Guaranty. To effectuate the foregoing intention, the Agent, the other Lenders and the Guarantors hereby irrevocably agree that the Guaranteed Obligations of the Guarantors under this Guaranty shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of the Guarantors that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other guarantor of the Guaranteed Obligations, result in the Guaranteed Obligations of the Guarantors under this Guaranty not constituting a fraudulent transfer or conveyance. For purposes hereof, "Bankruptcy Law" means Title 11, U.S. Code, or any similar federal or state law for the relief of debtors.

This is a guaranty of payment and performance and not a guaranty of collection only.

This Guaranty is enforceable irrespective of the validity, regularity or enforceability of any instrument, writing or arrangement relating to the Credit Agreement or the subject of a Credit Arrangement or the obligations thereunder and irrespective of any present or future law or order of any government (whether of right or in fact and whether Agent shall have consented thereto) or of any agency thereof purporting to reduce, amend, restructure or otherwise affect any obligation of the Borrowers or other obligor or to vary the terms of payment.

Consents and Waivers. Each Guarantor hereby consents that from time to time, without notice to or further consent of such Guarantor, the performance or observance by the Borrowers under the Credit Agreement or of any Credit Arrangement or Guaranteed Obligation may be

waived or the time of performance thereof extended by the Agent, and payment of any Guaranteed Obligation may be accelerated in accordance with any agreement governing the same, or may be extended, or the Credit Agreement or any Credit Arrangement may be renewed in whole or in part, or the terms of the Credit Agreement or any Credit Arrangement or any part thereof may be changed, including increase or decrease in the rate of interest thereon, or any collateral therefor may be exchanged, surrendered or otherwise dealt with as Agent may determine, or the Lenders may require or any co guarantor or any other party liable upon or in respect of any obligation may be released, and any of the acts mentioned in the Credit Agreement or any Credit Arrangement may be done, all without notice to or affecting the liability of the Guarantors hereunder. Each Guarantor waives notice of acceptance of this Guaranty and of the creation of any Guaranteed Obligations. Each Guarantors hereby waives presentment of any instrument, demand for payment, protest and notice of non payment or protest thereof or of any exchange, sale, surrender or other handling or disposition of any such collateral, and any requirement that Agent or the Lenders exhaust any right, power or remedy or proceed against the Borrowers under the Credit Agreement or any Credit Arrangement or against any other person under any other guaranty of, or security for, any of the Guaranteed Obligations. Each Guarantor hereby further waives any defense whatsoever which might constitute a defense available to, or discharge of, any Borrower or any Guarantor, other than final and irrevocable payment in full of the Guaranteed Obligations. No payment by the Guarantors pursuant to any provision hereunder shall entitle the Guarantors, by subrogation to the rights of Agent or the Lenders or otherwise, to any payment by the Borrowers (or out of the property of the Borrowers) except after payment in full of all sums (including interest, costs and expenses) which may be or become payable by the Borrowers to Agent, for the benefit of the Lenders or itself as Agent at any time or from time to time, unless the Guaranteed Obligations shall be paid in full.

**Continuing Guaranty; Termination.** This Guaranty shall be a continuing guaranty, and Agent and the Lenders may continue to act in reliance hereon until the receipt by Agent of written notice from the Guarantors not to give further financial accommodation in reliance hereon, provided that such notice shall not affect the obligations, absolute or contingent, of the Guarantors hereunder with respect to any such accommodation given prior to such notice. Such notice shall be effective only after receipt by Agent at its Business Office, and Agent shall have had a reasonable time to act upon such notice at each of its offices extending financial accommodation to the Borrowers.

**Financial Statements.** Each Guarantor shall furnish to Agent financial statements of such Guarantor in accordance with the terms of the Credit Agreement, or as otherwise requested by Agent from time to time.

**Foreign Currencies.** With respect to each obligation (or portion thereof) hereby guaranteed that is payable in a foreign currency, the following provisions shall apply: the Guarantors shall be obligated to pay to Agent for the benefit of the Lenders the unpaid amount of such Guaranteed Obligation in the same foreign currency and place in which such Guaranteed Obligation is payable by its terms; provided, however, that the Guarantors may, at their option (or, if for any reason whatsoever the Guarantors are unable to effect payment of such unpaid amount as aforesaid, the Guarantors shall be obligated to) pay to Agent for the benefit of the Lenders at its principal office in New York City the equivalent of such unpaid amount in United States currency computed at KeyBank National Association's selling rate, most recently in effect on or prior to the date such Guaranteed Obligation becomes due, for cable transfers of such foreign currency to the place where such Guaranteed Obligation is payable. In any case in which the Guarantors shall make or shall be obligated to make such payment in United States currency, the Guarantors shall hold Agent and the Lenders harmless from any loss incurred by Agent and/or the Lenders arising from any change in the value of United States currency in relation to such foreign currency between the date such Guaranteed Obligation becomes due and the date Agent or the Lenders is actually able, following the conversion of the United States currency paid by the Guarantors into such foreign currency and remittance of such foreign currency to the place where such Guaranteed Obligation is payable, to apply such foreign currency to such obligation. The term "foreign currency" as used herein shall be deemed to refer to that type of such currency which under applicable laws and regulations may be used to pay and discharge such Guaranteed Obligation.

**Rights Cumulative.** The rights, powers and remedies granted to Agent herein shall be cumulative and in addition to any rights, powers and remedies to which Agent may be entitled either by operation of law or pursuant to any other document or instrument delivered or from time to time to be delivered to Agent in connection with the Credit Agreement or any Credit Arrangement.

**Security.** As collateral security for the payment of any and all obligations and liabilities of the Guarantors to Agent and the Lenders, now existing or hereafter arising, the Guarantors grant to Agent for the benefit of the Lenders and itself as Agent a security interest in and a lien upon and right of offset exercisable following the occurrence of an Event of Default under the Credit Agreement against all moneys, deposit balances, securities or other property or interest therein of the Guarantors now or at any time hereafter held or received by or for or left in the possession or control of Agent or the Lenders or any of their respective affiliates, whether for safekeeping, custody, transmission, collection, pledge or for any other or different purpose.

**Representations and Warranties.** Each Guarantor represents and warrants that: (a) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing; (b) it has the power to execute and deliver this Guaranty and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance; (c) such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its organizational documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any material contractual restriction binding on or materially affecting it or any of its assets; (d) to the best of Guarantor's knowledge, all governmental and other consents that are required to have been obtained by it with respect to this Guaranty have been obtained and are in full force and effect and all conditions of any such consents have been complied with; (e) its obligations under this Guaranty constitute its legal, valid and binding obligations, enforceable in accordance with its terms except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency or other similar laws affecting creditors' rights generally; (f) all financial statements and related information furnished and to be furnished to Agent from time to time by the Guarantor are true and complete and fairly present the financial or other information stated therein as at such dates or for the periods covered thereby; (g) there are no actions, suits, proceedings or investigations pending or, to the knowledge of the Guarantor, threatened against or affecting the Guarantor before any court, governmental agency or arbitrator, which involve forfeiture of any assets of the Guarantor or which may materially adversely affect the financial condition, operations, properties or business of the Guarantor or the ability of the Guarantor to perform its obligation under this Guaranty; and (h) there has been no material adverse change in the financial condition of the Guarantor since the last such financial statements or information.

**Costs.** The Guarantors agree to reimburse Agent and Lenders on demand for all costs, expenses and charges (including, without limitation, reasonable fees and charges of external legal counsel for Agent and costs allocated by its internal legal department) in connection with the enforcement of this Guaranty.

**Entire Agreement, Amendment and Waivers.** This Guaranty constitutes the entire agreement between the Guarantors and Agent in respect of the subject matter hereof and may be amended only by a writing signed on behalf of each party and shall be effective only to the extent set forth in that writing. No delay by Agent or the Lenders in exercising any power or right hereunder shall operate as a waiver thereof or of any other power or right; nor shall any single or partial exercise of any power or right preclude other or future exercise thereof, or the exercise of any other power or right hereunder. No waiver shall be deemed to be made by Agent of any of its rights hereunder unless the same shall be in writing signed on behalf of Agent, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of Agent or the Lenders or the obligations of the Guarantors to Agent or the Lenders in any other respect at any other time.



As to each Guarantor who is an individual, this Guaranty is being signed by such Guarantor in an individual capacity and any descriptive terms placed after the Guarantor's name shall not affect the Guarantor's personal liability under this Guaranty.

**Successors.** This agreement shall be immediately binding upon the Guarantors and the successors of the Guarantors. In accordance with the terms of the Credit Agreement, the Agent and the Lenders may assign this Guaranty or any of its rights and powers hereunder, with all or any of the obligations hereby guaranteed, and may assign and/or deliver to any such assignee any of the security herefor and, in the event of such assignment, the assignee hereof or of such rights and powers and of such security, if any such security be so assigned and/or delivered, shall have the same rights and remedies as if originally named herein in place of Agent and the Lenders, and Agent and the Lenders shall be thereafter fully discharged from all responsibility with respect to any such Security so assigned and/or delivered.

**Governing Law; Jurisdiction.** This Guaranty shall be governed by and construed in accordance with the laws of the State of New York. Each Guarantor consents to the nonexclusive jurisdiction and venue of the state or federal courts located in such state. In the event of a dispute hereunder, suit may be brought against the Guarantors in such courts or in any jurisdiction where any Guarantor or any assets of any Guarantor may be located. Service of process by Agent in connection with any dispute shall be binding on the Guarantors if sent to the Guarantors by registered mail at the address(es) specified below or to such further address(es) as the Guarantors may specify to Agent in writing.

**Guarantor Waivers.** EACH GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS GUARANTY, AND AGREES THAT ANY SUCH DISPUTE SHALL, AT AGENT'S OPTION, BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

IN ADDITION, EACH GUARANTOR WAIVES THE RIGHT TO INTERPOSE ANY DEFENSE BASED UPON ANY STATUTE OF LIMITATIONS OR ANY CLAIM OF DELAY BY AGENT AND ANY SET OFF OR COUNTERCLAIM OF ANY NATURE OR DESCRIPTION.

[The remaining space intentionally left blank]

IN WITNESS WHEREOF, the Guarantors have executed this instrument or have caused this instrument to be duly executed by their proper officers as of \_\_\_\_\_, 2005.

AIR VENT INC.

**Address for notices:**  
 c/o Gibraltar Industries, Inc.  
 3556 Lakeshore Road  
 PO Box 2028  
 Buffalo, NY 14219-0228  
  
 Telecopier No. (716) 826-1589

By: \_\_\_\_\_  
 Name:  
 Title:

STATE OF NEW YORK )  
 ) ss:  
 COUNTY OF ERIE )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2005, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
 Notary Public

APPLETON SUPPLY CO., INC.

**Address for notices:**  
 c/o Gibraltar Industries, Inc.  
 3556 Lakeshore Road  
 PO Box 2028  
 Buffalo, NY 14219-0228  
  
 Telecopier No. (716) 826-1589

By: \_\_\_\_\_  
 Name:  
 Title:

STATE OF NEW YORK )  
 ) ss:  
 COUNTY OF ERIE )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2005, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
 Notary Public

B&W HEAT TREATING CORP.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK )  
                                  ) ss:  
COUNTY OF ERIE )

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\_\_\_\_\_  
Notary Public

B & W OF MICHIGAN, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK )  
                                  ) ss:  
COUNTY OF ERIE )

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\_\_\_\_\_  
Notary Public

B&W LEASING, LLC

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK )  
                                  ) ss:  
COUNTY OF ERIE )

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\_\_\_\_\_  
Notary Public

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Buffalo, NY 14219-0228

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\_\_\_\_\_  
Notary Public

CAROLINA COMMERCIAL HEAT TREATING INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK )  
                                  ) ss:  
COUNTY OF ERIE     )

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\_\_\_\_\_  
Notary Public

CLEVELAND PICKLING, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

By: \_\_\_\_\_  
Name:  
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STATE OF NEW YORK )  
                                  ) ss:  
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\_\_\_\_\_  
Notary Public

CONSTRUCTION METALS INC.

**Address for notices:**

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

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

Name:  
Title:

STATE OF NEW YORK )  
                                  ) ss:  
COUNTY OF ERIE   )

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\_\_\_\_\_  
Notary Public

GIBALTAR INTERNATIONAL, INC.

**Address for notices:**

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

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

Name:  
Title:

STATE OF NEW YORK )  
                                  ) ss:  
COUNTY OF ERIE   )

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\_\_\_\_\_  
Notary Public

GIBALTAR STRIP STEEL, INC.

**Address for notices:**

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

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

Name:  
Title:

STATE OF NEW YORK )  
                                  ) ss:  
COUNTY OF ERIE   )

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\_\_\_\_\_  
Notary Public

GSCNY CORP.

**Address for notices:**

c/o Gibraltar Industries, Inc.

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

Name:

3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Title:

Telecopier No. (716) 826-1589

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF ERIE )

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\_\_\_\_\_  
Notary Public

HARBOR METAL TREATING CO.

Address for notices:

By: \_\_\_\_\_  
Name:  
Title:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

STATE OF NEW YORK )  
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COUNTY OF ERIE )

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\_\_\_\_\_  
Notary Public

HARBOR METAL TREATING OF INDIANA, INC.

Address for notices:

By: \_\_\_\_\_  
Name:  
Title:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

STATE OF NEW YORK )  
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\_\_\_\_\_  
Notary Public

HI-TEMP TREATING, INC.

Address for notices:

By: \_\_\_\_\_  
Name:  
Title:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

STATE OF NEW YORK )  
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\_\_\_\_\_  
Notary Public

K&W METAL FABRICATORS, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
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STATE OF NEW YORK )  
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\_\_\_\_\_  
Notary Public

PENNSYLVANIA INDUSTRIAL HEAT TREATERS, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

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STATE OF NEW YORK )  
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\_\_\_\_\_  
Notary Public

SCM METAL PRODUCTS, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
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STATE OF NEW YORK )  
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\_\_\_\_\_  
Notary Public

SOLAR GROUP, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

STATE OF NEW YORK )  
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\_\_\_\_\_  
Notary Public

SOLAR OF MICHIGAN, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
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\_\_\_\_\_  
Notary Public

SOUTHEASTER METALS MANUFACTURING COMPANY,

INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

STATE OF NEW YORK )

COUNTY OF ERIE ) ss:  
)

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\_\_\_\_\_  
Notary Public

UNITED STEEL PRODUCTS COMPANY, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

By: \_\_\_\_\_  
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\_\_\_\_\_  
Notary Public

WM. R. HUBBELL STEEL CORPORATION

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

By: \_\_\_\_\_  
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\_\_\_\_\_  
Notary Public

Exhibit C-2

GENERAL SECURITY AGREEMENT

(Subsidiary Guarantors)

The undersigned, and all other Subsidiary Guarantors (as defined below) which from time to time become a party hereto (each individually a "Debtor" and collectively, the "Debtors"), execute and deliver this General Security Agreement (the "Security Agreement") to KEYBANK NATIONAL ASSOCIATION, having an office located at KeyCenter, 127 Public Square, Cleveland, Ohio 44114, as collateral agent for the Lenders (as defined below) and the Noteholders (as defined below) (the "Collateral Agent"; the Agent, the Lenders and the Noteholders being collectively referred to herein as the "Secured Lender Group" and individually as a "Secured Party") in consideration of one or more loans, letters of credit or other financial accommodation made, issued or extended by the Lenders or the Noteholders to Gibraltar Industries, Inc., a Delaware corporation, and Gibraltar Steel Corporation of New York, a New York corporation (each a "Borrower" and collectively, the "Borrowers"). Accordingly, the Collateral Agent shall have the rights, remedies and benefits hereinafter set forth.

1. Definitions.



(a) The term "Bank Liabilities" means and includes (i) any and all indebtedness, obligations and liabilities of the Borrowers to any of the Lenders and/or KeyBank National Association, as administrative agent (the "Agent") and also to others to the extent of their participations granted to or interests therein created or acquired for them by the Lenders or Agent, arising under that certain Credit Agreement dated even date herewith among the Borrowers, the Agent and the lending institutions which from time to time become a party thereto (individually a "Lender" and collectively, the "Lenders"), as amended, as the same may be further amended, modified, supplemented, restated or replaced from time to time (the "Bank Credit Agreement"), (ii) any and all indebtedness, obligations and liabilities of the Debtors to any of the Lenders and/or the Agent and also to others to the extent of their participations granted to or interests therein created or acquired by them for the Lenders or the Agent, and the Secured Documents (as defined below), including Hedge Agreements (as defined in the Bank Credit Agreement) executed in connection therewith and (iii) any and all indebtedness, obligations and liabilities of each of the Borrowers or any other Subsidiary Guarantor arising under any Secured Document to which it is a party, in the case of clause (i), (ii) or (iii) above, now or hereafter existing, arising directly between the Borrowers or the Debtors and the Lenders or Agent or acquired outright, conditionally, as a participation or as collateral security from another by the Lenders or Agent, absolute or contingent, joint and/or several, secured or unsecured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, direct or indirect.

(b) The term "Collateral" means all personal property and fixtures of the Debtors, whether now or hereafter existing or now owned or hereafter acquired and wherever located, of every kind and description, tangible or intangible, including but not limited to, the balance of every deposit account, now or hereafter existing, of the Debtors with any of the Lenders or the Noteholders (or any subsidiary or affiliate of any Lender or Noteholder) and any other claim of any Debtor against any of the Lenders, the Noteholders or the Collateral Agent, now or hereafter existing, and all money, goods (including equipment, farm products, fixtures and inventory), instruments, securities, documents, chattel paper, accounts, contract rights, letter-of-credit rights, deposit accounts, investment property, general intangibles (including, without limitation, commercial tort claims and payment intangibles), credits, claims, demands, precious metals and any other property, rights and interests of the Debtors, and shall include the supporting obligations, proceeds, products and accessions of and to any thereof.

(c) The term "Enforcement" means taking any action seeking remedies with respect to the Collateral, pursuing enforcement (judicial or otherwise) with respect to any of the Liens granted under any of the Secured Documents or filing any involuntary petition of bankruptcy or similar action with respect to any Borrower, any Debtor or any other Subsidiary Guarantor.

(d) The term "Event of Default" means (i) any Event of Default under the Bank Credit Agreement, or (ii) any Event of Default under the Note Purchase Agreement.

(e) The term "Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, security interest, lien, charge or encumbrance, or preference, priority or other security agreement or preferential arrangement in respect of any asset of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

(f) The term "Liabilities" means, collectively, the Bank Liabilities and the Noteholder Liabilities.

(g) The term "Noteholder Liabilities" means and shall include (i) any and all indebtedness, obligations and liabilities (including, without limitation, any Make Whole Amount (as defined in the 2002 Note Purchase Agreement) of Gibraltar Steel Corporation of New York to any holder of the 7.35% Senior Secured Notes ("2002 Notes") of Gibraltar Industries, Inc., formerly known as Gibraltar Steel Corporation (the "Company") due July 3, 2007, in the aggregate principal amount of \$25,000,000 and also to others to the extent of their participations granted to or interests therein created or acquired for them by the 2002 Noteholders arising under that certain 2002 Note Purchase Agreement dated as of July 3, 2002 among the Borrowers and any purchaser thereof (individually, a "2002 Noteholder" and collectively, the "2002 Noteholders"), as amended and restated pursuant to an Amended and Restated Note Purchase Agreement of even date herewith and as the same may be further amended, modified, supplemented, restated or replaced from time to time (the "2002 Note Purchase Agreement"), (ii) any and all indebtedness, obligations and liabilities (including, without limitation, any Make Whole Amount (as defined in the 2004 Note Purchase Agreement) of Gibraltar Steel Corporation of New York to any holder of the 5.75% Senior Secured Notes ("2004 Notes") of the Company due June 17, 2011, in the aggregate principal amount of \$75,000,000 and also to others to the extent of their participations granted to or interest therein created or acquired for them by the 2004 Noteholders arising under that certain Note Purchase Agreement dated as of June 18, 2004 among the Borrowers and any purchaser thereof (individually, a "2004 Noteholder" and collectively, the "2004 Noteholders" and collectively with the 2002 Noteholders, the "Noteholders"), as amended and restated pursuant to an Amended and Restated Note Purchase Agreement of even date herewith and as the same may be further amended, modified, supplemented, restated or replaced from time to time (the "2004 Note Purchase Agreement" and collectively with the 2002 Note Purchase Agreement, the "Note Purchase Agreement"), (iii) any and all indebtedness, obligations and liabilities of the Debtors to any of the Noteholders and also to others to the extent of their participations granted to or interests therein created or acquired by them for the Noteholders, under any Secured Document to which it is a party, and (iv) any and all indebtedness, obligations and liabilities of each of the Borrowers, or any other Subsidiary Guarantor arising under any Secured Document to which it is a party, in the case of clause (i), (ii), (iii) or (iv) above, now or hereafter existing, arising directly between the Borrowers or the Debtors and the Noteholders or acquired outright, conditionally, as a participation or as collateral security from another by the Noteholders, absolute or contingent, joint and/or several, secured or unsecured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, direct or indirect.

(h) The term "Obligor" means the Debtors, the Borrowers and any maker, drawer, acceptor, indorser, guarantor, surety, accommodation party or other person liable upon or for any of the Liabilities or Collateral.

(i) The term "Requisite Lenders" means the Secured Parties which hold at least 50% of the outstanding Liabilities.

(j) The term "Secured Document" means collectively (a) this Agreement, (b) the Bank Credit Agreement and any document executed and delivered in connection therewith and (c) the 2002 Note Purchase Agreement, the 2004 Note Purchase Agreement or any other Related Document, as defined in either the 2002 Note Purchase Agreement or the 2004 Note Purchase Agreement.

(k) The term "Subsidiary Guarantors" means collectively, each Subsidiary of the Borrowers set forth on Schedule A attached hereto executing and delivering to the Agent for the benefit of the Lenders and to the Noteholders a guaranty dated of even date herewith guarantying the payment of the Bank Liabilities and the Noteholder Liabilities respectively and each other Subsidiary of the Borrowers which subsequent to the date hereof, executes and delivers to the Agent for the benefit of the Lenders and to the Noteholders, a joinder to such guaranty of payment of the Bank Liabilities and the Noteholder Liabilities respectively.

(l) The term "Uniform Commercial Code" means the Uniform Commercial Code in effect in the State of New York from time to time.

(m) Unless the context otherwise requires, all terms used herein which are defined in the Uniform Commercial Code shall have the meanings therein stated.

2. **Grant of Security Interest.** As security for the payment of the Liabilities, the Debtors hereby grant to the Collateral Agent for the benefit of the Secured Lender Group and Collateral Agent a security interest in, a general lien upon and/or right of set off against the Collateral.

3. **Maintenance of Collateral.** At any time and from time to time, each Debtor will promptly: (a) deliver and pledge to the Collateral Agent, indorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Collateral Agent may request, any and all instruments, documents and/or chattel paper as the Collateral Agent may specify in its demand; (b) give, execute, deliver, file, authorize to file and/or record any notice, statement, instrument, document, agreement or other papers that may be necessary or desirable, or that the Collateral Agent may reasonably request, in order to create, preserve, perfect, or validate any security interest granted pursuant hereto or to enable the Collateral Agent to exercise and enforce its rights hereunder or with respect to such security interest; (c) keep and stamp or otherwise mark any and all documents and chattel paper and its individual books and records relating to inventory, accounts and contract rights in such manner as the Collateral Agent may reasonably require; (d) permit representatives of the Collateral Agent at any time upon reasonable prior notice to the Debtor, during normal business hours, to inspect its inventory and to inspect and make abstracts from the Debtor's books and records pertaining to inventory, accounts, contract rights, chattel paper, instruments and documents; (e) except as set forth in the Bank Credit Agreement and the Note Purchase Agreement, obtain the Collateral Agent's consent prior to any change of name, address, legal entity status, location of books and records or location of Collateral; (f) deliver to the Collateral Agent a schedule describing with particularity any deposit account, investment property, commodity account, securities account, letter of credit or letter of credit rights which constitutes a part of the Collateral; (g) notify the Collateral Agent of the particulars of the Debtor's rights under any commercial tort claim that have arisen; and (h) cooperate with the Collateral Agent in obtaining control of Collateral consisting of deposit accounts, investment property, letter-of-credit rights or electronic chattel paper, including, but not limited to entering into one or more control agreements or assignments as the Collateral Agent may request. The right is expressly granted to the Collateral Agent, at its discretion, to notify warehousemen or any other persons in possession of Collateral of the Collateral Agent's security interest therein and to obtain an acknowledgment thereof from such third person and to file one or more financing statements under the Uniform Commercial Code naming the Debtor as debtor and the Collateral Agent as secured party for the benefit of the Secured Lender Group and indicating therein the types or describing the items of Collateral herein specified. Without the prior written consent of the Collateral Agent, except as set forth in the Bank Credit Agreement and the Note Purchase Agreement, the Debtor will not file or authorize or permit to be filed in any jurisdiction any such financing or like statement in which the Collateral Agent, on behalf of the Secured Lender Group is not named as the sole secured party. With respect to the Collateral, or any part thereof, which at any time shall come into the possession or custody or under the control of the Collateral Agent or any of its agents, associates or correspondents, for any purpose, the right is expressly granted to the Collateral Agent, at its discretion, following the occurrence and during the continuation of an Event of Default, to transfer to or register in the name of itself or its nominee for the benefit of the Secured Lender Group any of the Collateral; to exchange any of the Collateral for other property upon any reorganization, recapitalization or other readjustment and in connection therewith to deposit any of the Collateral with any committee or depository upon such terms as it may determine; after the occurrence of an Event of Default and while such Event of Default is continuing, to notify any account debtor or obligor on an instrument to make payment to the Collateral Agent for the benefit of the Secured Lender Group; and to enforce obligations of such account debtor or obligor; and after the occurrence of an Event of Default and while such Event of Default is continuing, to exercise or cause its nominee to exercise all or any powers with respect to the Collateral with same force and effect as an absolute owner thereof; all without notice (except such notice as may be required by applicable law and cannot be waived) and without liability except to account for property actually received by it. Without limiting the generality of the foregoing, payments, distributions and/or dividends, in securities, property or cash, including without limitation dividends representing stock or liquidating dividends or a distribution or return of capital upon or in respect of the Collateral or any part thereof or resulting from any split up, revision or reclassification of the Collateral or any part thereof or received in exchange for the Collateral or any part thereof as a result of a merger, consolidation or otherwise, shall be paid directly to and retained by the Collateral Agent and held by it until applied as herein provided, as additional collateral security pledged under and subject to the terms hereof. The Collateral Agent shall be deemed to have possession of any of the Collateral in transit to or set apart for it or any of its agents, associates, or correspondents.

4. **Insurance.** The Debtors shall keep insured all Collateral which is tangible property in amounts reasonably acceptable to the Collateral Agent, with such coverage by such insurers and in such forms and amounts and against such risks as are generally consistent with industry standards and in compliance with the terms of the Credit Documents (as defined in the Credit Agreement), at the Debtors' expense, and, the policies shall name the Collateral Agent as additional insured and loss payee, pursuant to endorsements satisfactory to the Collateral Agent for the benefit of the Secured Lender Group and delivered to the Collateral Agent. If the Debtors shall default in this regard, the Collateral Agent shall have the right to insure and charge the cost to the Debtors. The Collateral Agent assumes no risk or responsibility in connection with the payment or nonpayment of losses, the Collateral Agent's only responsibility being to credit the Debtors with any insurance payment received on account of losses. In the event of any default under this Security Agreement and so long as such default is continuing, the Collateral Agent shall have power of attorney to cancel, assign or surrender any insurance policy or policies and to collect the return premiums due thereon and to apply the proceeds thereof to the Liabilities secured hereby. The Debtors will immediately notify the Collateral Agent in writing of any material damage to or loss of any of the Collateral which is tangible property.

5. **Collection and Disposition.**

(a) After the occurrence and during the continuation of an Event of Default, the Collateral Agent at its discretion may or upon direction of the Requisite Lenders shall, whether any of the Liabilities be due, in its name or in the name of any Debtor or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for, or make any compromise or settlement deemed desirable with respect to, any of the Collateral, but shall be under no obligation to do so, or the Collateral Agent may, or upon the direction of the Requisite Lenders shall, extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of, the Debtors. The Collateral Agent shall not be required to take any steps necessary to preserve any rights against prior parties to any of the Collateral. After the occurrence and during the continuation of an Event of Default, the Collateral Agent may use or operate any of the Collateral for the purpose of preserving the Collateral or its value in the manner and to the extent the Collateral Agent deems appropriate, and the Collateral Agent may render the Collateral unusable or dispose of the Collateral in a commercially reasonable manner.

(b) After the occurrence and during the continuation of an Event of Default, the Debtors shall, at the request of the Collateral Agent, assemble the Collateral at such place or places as the Collateral Agent designates in its request, and, to the extent permitted by applicable law, the Collateral Agent shall have the right, with or without legal process and with or without prior notice or demand, to take possession of the Collateral or any part thereof and to enter any premises for the purpose of taking possession thereof. The Collateral

Agent shall have the rights and remedies with respect to the Collateral of a secured party under the Uniform Commercial Code (whether or not such Code is in effect in the jurisdiction where the rights and remedies are asserted).

(c) In addition, with respect to the Collateral, or any part thereof, which shall then be or shall thereafter come into the possession or custody of the Collateral Agent or any of its agents, associates or correspondents after the occurrence and during the continuation of an Event of Default, the Collateral Agent may sell or cause to be sold at any location selected by it and reasonable under the circumstances, in one or more sales or parcels, at such price as the Collateral Agent may deem best, and for cash or on credit or for future delivery, without assumption of any credit risk, all or any of the Collateral, at any broker's board or at public or private sale, in any reasonable manner permissible under the Uniform Commercial Code (except that, to the extent permitted thereunder, each Debtor hereby waives the requirements of said Code), and the Collateral Agent or any of the Lenders or any of the Noteholders or anyone else may be the purchaser of any or all of the Collateral so sold and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity or redemption, of the Debtors, any such demand, notice or right and equity being hereby expressly waived and released. The Collateral Agent (i) shall have no obligation to clean up or otherwise prepare the Collateral for sale, (ii) may comply with any applicable law requirements in connection with the disposition of the Collateral, (iii) may sell the Collateral without giving any warranties, and any of such actions or inaction will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. The Debtors will pay to the Collateral Agent all expenses (including reasonable attorneys' fees and legal expenses incurred by the Collateral Agent or any of the Lenders or Noteholders) of, or incidental to, the enforcement of any of the provisions hereof or of any of the Liabilities, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement of any of the Collateral. Notwithstanding that the Collateral Agent, whether in its own behalf and/or on behalf of another or others, may continue to hold the Collateral and regardless of the value thereof, the Debtors shall be and remain liable for the payment in full, principal and interest, of any balance of the Liabilities at any time unpaid. The Collateral Agent may exercise its rights with respect to the Collateral without resorting to or regard to other collateral or sources of reimbursement for the Liabilities.

6. **Setoff.** After the occurrence and during the continuation of an Event of Default hereunder and the Collateral Agent shall have demanded payment thereof from the Debtors, in addition to all other rights and remedies, the Collateral Agent and each of the Lenders (including subsidiaries and each and every affiliate) and each of the Noteholders (including subsidiaries and each and every affiliate) is hereby irrevocably authorized, without prior notice to the Debtors, to set off any balances held for the account of or any other liability owing by any such Lender, Noteholder or Collateral Agent or any such subsidiary or affiliate to the Debtor at any of the Collateral Agent's, Lender's or Noteholders' (or such subsidiary's or affiliate's) offices, in dollars or any other currency, against any of the Liabilities as such Lender, Noteholder or Collateral Agent may elect.

7. **Enforcement With Respect to Collateral.**

(a) The Required Lenders (as defined in the Bank Credit Agreement) or Required Holders (as defined in the Note Purchase Agreement) shall have the right to deliver a notice to the Collateral Agent to the extent an Event of Default shall have occurred under their respective Secured Documents. Upon and after the delivery to the Collateral Agent of (i) any such notice, and (ii) the written direction of the Requisite Lenders to undertake Enforcement, the Collateral Agent shall proceed to protect and enforce rights or remedies granted hereunder, as so directed, either by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein or in any other Secured Document, or to enforce any other legal or equitable right or remedy provided herein or therein. The Collateral Agent shall give written notice to each Lender and each Noteholder as to any such Enforcement it may take under the Secured Documents. Other than actions necessary to prevent the waste, diminution, impairment or loss of any Collateral which could not reasonably be taken through notice or instruction to the Collateral Agent, each Secured Party hereby agrees that it shall not take any action of Enforcement in respect of or effecting Collateral or claims or demands made or notices given hereunder except through the delivery or written instructions by the Requisite Lenders to the Collateral Agent.

(b) All payments received by the Collateral Agent consisting of proceeds of any Collateral shall be applied FIRST, to the reasonable expenses incurred by the Collateral Agent in connection with any or all of the retaking, holding, storing, preserving, processing, maintaining, advertising, preparing for or consummating any sale, lease or other disposition of, any Collateral, including trustee's fees and commissions, court costs and reasonable attorney's fees and legal expenses pertaining thereto, SECOND, to each Lender in accordance with such Lender's Share (as defined in Section 22 below) and to each Noteholder in accordance with such Noteholder's Share (as defined in Section 22 below); provided however, amounts allocable to undrawn Letters of Credit shall be distributed to the Contingent Collateral Account, as defined in Section 13, below; and THIRD, any surplus remaining after application as provided for herein, to the Debtors.

8. **Waivers of Rights.** Except as otherwise expressly set forth herein, until the payment in full of the Liabilities, each Lender and each Noteholder hereby waives any and all rights each may individually (i.e., other than through a Collateral Agent) now or hereafter have to exercise any right pursuant to this Agreement or under the laws of any applicable jurisdiction or otherwise to dispose of or retain any of the Collateral. Each of them hereby agrees not to take any action whatsoever to enforce any term or provision of the this Agreement or to enforce any right with respect to the Collateral in conflict with the provisions of this Agreement. Nothing set forth above or otherwise contained in this Agreement shall be interpreted as a waiver of any rights of setoff (by contract, law or otherwise) of any Secured Party; provided that any amount received by such setoff shall be delivered to the Collateral Agent and distributed in accordance with Subsection (b) above.

9. **Permitted Action.** Any Secured Party may, without instruction from the Collateral Agent, but in no event shall be required to, take action permitted by applicable law or in accordance with the terms of this Agreement or any other Secured Document to preserve (but not enforce or possess) its rights and Liens in any item of Collateral securing the payment and performance of the Liabilities, including but not limited to curing any default or alleged default under any contract entered into by any Borrower or any Debtor, paying any tax, fee or expense on behalf of any Borrower or any Debtor, exercising any offset or recoupment rights and paying insurance premiums on behalf of any Borrower or any Debtor, so long as such action shall not impair the rights of the Collateral Agent or of any Secured Party or otherwise be contrary to the terms of this Agreement.

10. **Instruction of Collateral Agent/Release of Collateral.** The Collateral Agent shall not exercise any or all rights and remedies afforded the Collateral Agent hereunder unless and until such Collateral Agent shall receive written instructions from the Requisite Lenders, unless any Collateral threatens to perish or speedily decline in value, in which instance the Collateral Agent may (but shall not be obligated to) proceed to enforce such rights against the Collateral for the protection of, and in the best interests of, the applicable Secured Parties prior to receiving such written instruction. The Collateral Agent shall not release any of the Collateral from the Lien granted hereunder without the prior written consent of the Requisite Lenders, except to the extent that the Borrowers are permitted to sell or transfer such Collateral under the terms of the Bank Credit Agreement and the Note Purchase Agreement.

11. **Pari Passu.** Each Secured Party acknowledges and agrees that the Liabilities share the Lien and benefit and priority of, in and to this Agreement and the Collateral, and share all payments made with respect thereto, on a pari passu basis.

12. **Further Assurances.** Each of the parties hereto agrees to execute and deliver all such further documents and instruments and to use its best efforts to take all such further action as may be reasonably necessary or advisable to implement and give effect to the transactions contemplated hereby. Each Secured Party will from time to time provide such information that is available to it to the Collateral Agent as may be necessary to enable the Collateral Agent to make any calculation hereunder or otherwise required for any other purpose hereof. Each Secured Party will from time to time consult with the Collateral Agent and any other Secured Party in good faith regarding the Enforcement of its rights with a view to recovering amounts due under any of the Secured Documents.

13. **Cash Collateral for Contingent Obligations.** To the extent any proceeds are received by the Collateral Agent in respect of Bank Liabilities that are attributable to Letters of Credit and/or Hedge Agreement (as defined in the Bank Credit Agreement), such proceeds shall be deposited into an account held by the Collateral Agent (a "Contingent Collateral Account"), for distributions as set forth in Section 13. Upon the request of the Agent on behalf of the Lenders, the Collateral Agent shall deliver to the Agent from the Contingent Collateral Account, to the extent sufficient funds are held therein, the amount of any unpaid reimbursement obligations of the Borrowers pursuant to Section 3.3 of the Bank Credit Agreement, with respect to any Letter of Credit or amount due and owing with respect to a Hedge Agreement. If any Letter of Credit expires, is reduced, is cancelled or the stated amount thereof is otherwise reduced, or a Hedge Agreement, is cancelled or terminates with the result that the Bank Liabilities are reduced, then an amount equal to the amount of such reduction in such Bank Liabilities shall be distributed from the Contingent Collateral Account by the Collateral Agent for further distribution to the other Secured Parties in accordance with Section 7(b) in the amounts they would have received had such expired, reduced or cancelled Letter of Credit or Hedge Agreement had not been included in the calculation of Bank Liabilities with respect to prior distributions. The Collateral Agent shall from time to time invest amounts held in the Contingent Collateral Account as directed by the Agent, or, if the Agent shall have not so directed, in a money market or sweep account of the Collateral Agent in accordance with its investment policies for similar accounts.

14. **Notices.** All notices, requests, demands or other communications to or upon the Debtors or the Collateral Agent shall be in writing and shall be deemed to be delivered upon receipt if delivered by hand or overnight courier or five days after mailing to the address (a) of the Debtors set forth below the Debtors' execution of this Security Agreement, (b) of the Collateral Agent as first set forth above, with a copy to the Noteholders at the address set forth in the Note Purchase Agreement or (c) of the Debtors or the Collateral Agent at such other address as the Debtors or the Collateral Agent shall specify to the other in writing.

15. **Entire Agreement, Amendment and Waiver.** This Security Agreement constitutes the entire agreement between the Debtors and the Collateral Agent in respect of the subject matter hereof and may be amended only by a writing signed on behalf of each party and shall be effective only to the extent set forth in that writing. No delay by the Collateral Agent or any of the Lenders or Noteholders in exercising any power or right hereunder shall operate as a waiver thereof or of any other power or right; nor shall any single or partial exercise of any power or right preclude other or future exercise thereof, or the exercise of any other power or right hereunder.

16. **General Waivers.** Each Debtor hereby waives presentment, notice of dishonor and protest of the Secured Documents. Each Debtor waives all demands, notices and protests of every kind which are not expressly required under this Security Agreement which are permitted by law to be waived, and which would, if not waived, impair the Collateral Agent's enforcement of this Security Agreement or release any Collateral from the Collateral Agent's security interest hereunder. By way of example, but not in limitation of the Collateral Agent's rights under this Security Agreement, the Collateral Agent does not have to give the Debtors notice of any of the following:

- (a) notice of acceptance of this Security Agreement;
- (b) notice of loans made, credit extended, Collateral received or delivered;
- (c) any Event of Default;
- (d) any action which the Collateral Agent does or does not take regarding the Borrowers, the Debtors or any other person or any other collateral securing the Liabilities;
- (e) except as otherwise provided herein, enforcement of this Security Agreement against the Collateral; or
- (f) any other action taken in reliance on this Security Agreement.

Each Debtor waives all rules of suretyship law and any other law whatsoever which is legally permitted to be waived and which would, if not waived, impair the Collateral Agent's enforcement of its security interests. By way of example, but not in limitation of the Collateral Agent's rights under this Security Agreement, the Collateral Agent or the Lenders, as set forth in the Bank Credit Agreement or the Noteholders, as set forth in the Note Purchase Agreement, as the case may be, may do any of the following without notice to the Debtors except to the extent that notice to the Debtors is required under another Secured Document or in each case in which the agreement of the Debtors is required because any Debtor is a principal party to a Liability and, as a matter of contract, the agreement of the Debtors is required:

- (a) change, renew or extend the time for repayment of all or any part of the Liabilities;
- (b) change the rate of interest or any other provisions with respect to all or any part of the Liabilities;
- (c) release, surrender, sell or otherwise dispose of any money or property which is in the Collateral Agent's possession as collateral security for the Liabilities;
- (d) fail to perfect any security interest in any Collateral;
- (e) delay or refrain from exercising any of the Collateral Agent's, Lenders' or Noteholders' rights;
- (f) settle or compromise any and all claims pertaining to the Liabilities and the Collateral; and
- (g) apply any money or property of the Debtors or that of any other party liable to the Collateral Agent for any part of the Liabilities in any order the Collateral Agent or the Lenders or the Noteholders, as applicable, choose.

**EACH DEBTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS SECURITY AGREEMENT OR ANY FACILITY DOCUMENT, AND AGREES THAT ANY SUCH DISPUTE SHALL, AT THE COLLATERAL AGENT'S OPTION, BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.**

**IN ADDITION, EACH DEBTOR WAIVES THE RIGHT TO INTERPOSE ANY DEFENSE BASED UPON ANY STATUTE OF LIMITATIONS OR ANY CLAIM OF DELAY BY THE COLLATERAL AGENT AND ANY SET OFF OR COUNTERCLAIM OF ANY NATURE OR DESCRIPTION.**

17. **Rights Cumulative.** The rights, powers and remedies granted to the Collateral Agent, the Lenders and the Noteholders herein shall be cumulative and in addition to any rights, powers and remedies to which the Collateral Agent, the Lenders or the Noteholders may be entitled either by operation of law or pursuant to any other document or instrument delivered or from time to time to be delivered to the Collateral Agent, the Lenders or the Noteholders in connection with any of the Liabilities.

18. **Governing Law; Jurisdiction.** This Security Agreement shall be governed by and construed in accordance with the laws of the State of New York. Each Debtor consents to the nonexclusive jurisdiction and venue of the state or federal courts located in such state. In the event of a dispute hereunder, suit may be brought against the Debtors in such courts or in any jurisdiction where any Debtor or any assets of any Debtor may be located. Service of process by the Collateral Agent in connection with any dispute shall be binding on the Debtors if sent to the Debtors by registered mail at the address(es) specified below or to such further address(es) as the Debtors may specify to the Collateral Agent in writing.

19. **Assignment.** In accordance with the terms of the Bank Credit Agreement, the Lenders and the Agent may assign, transfer and/or deliver to any transferee of any of the Bank Liabilities. In accordance with the terms of the Note Purchase Agreement, the Noteholders may assign, transfer and/or deliver to any transferee of any of the Noteholder Liabilities. In either such case, the transferee shall be vested with all the powers and rights of such party hereunder with respect to such Collateral, but such party shall retain all rights and powers hereby given with respect to any of the Collateral not so assigned, transferred or delivered.

20. **Waiver of Presentment, etc.** Each Debtor hereby waives presentment, notice of dishonor and protest of all instruments included in or evidencing the Liabilities or the Collateral and any and all other notices and demands whatsoever, whether or not relating to such instruments.

21. **Miscellaneous.** The Debtors shall be jointly and severally liable hereunder and all provisions hereof regarding the Liabilities or Collateral of the Debtors shall apply to any Liability or any Collateral of any or all of them. KeyBank National Association shall act for itself and its affiliates and the Lenders and the Noteholders as Collateral Agent hereunder. This Security Agreement shall be binding upon the heirs, executors, administrators, assigns or successors of the Debtors; shall constitute a continuing agreement; and shall so continue in force notwithstanding any change in any partnership party hereto, whether such change occurs through death, retirement or otherwise.

22. **Appointment of Collateral Agent.**

(a) Each Noteholder and each Lender hereby appoints the Collateral Agent to act as its agent in connection with the administration of the Collateral. The Collateral Agent shall hold all Collateral for the benefit of the Secured Lender Group. The Collateral Agent may perform any of its functions and duties under this Agreement by or through any agents or any of its directors, officers or employees. In performing any of its functions and duties under this Agreement, the Collateral Agent shall not be deemed to be acting as a trustee for, or partner of, the Lenders or the Noteholders or to have assumed any relationship of agency, trust or partnership with or for any Debtor. The Collateral Agent may resign at any time by giving written notice thereof to all the Lenders, the Noteholders and the Debtors. Upon such resignation, the Requisite Lenders shall have the right to appoint a successor Collateral Agent. If no successor Collateral Agent shall have been so appointed by the Requisite Lenders, and shall have accepted such appointment within thirty (30) days after the retiring Collateral Agent's giving of notice of resignation, then the retiring Collateral Agent may, on behalf of all the Secured Parties, appoint a successor Collateral Agent. Such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, duties and obligations of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations thereafter under this Agreement. The Collateral Agent shall continue to perform its duties hereunder until a successor Collateral Agent shall have been appointed and accepts such appointment in writing. After any retiring Collateral Agent's resignation, the provisions of this Section 22, including, without limitation, the indemnity provisions of Subsection 22(i) hereof, shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement.

(b) The Collateral Agent makes no representation or warranty with respect to, and assumes no responsibility for (a) the validity, genuineness, legality, enforceability, sufficiency, or due execution of this Security Agreement against the Debtors, (b) the existence or value of any of the Collateral, (c) any representations or warranties made by or on behalf of the Borrowers or the Debtors, (d) any obligations to be performed or observed by the Borrowers or the Debtors under the terms of the Bank Credit Agreement, the Note Purchase Agreement, this Agreement and any other document executed and delivered in connection with any of the foregoing; (e) the collectibility of the Liabilities, or (f) the financial condition of the Borrowers or the Debtors.

(c) Each of the Noteholders represents, warrants, and acknowledges that it has independently reviewed and approved all financial and other information necessary to make an independent decision with respect to the Noteholder Liabilities, this Security Agreement, and the creditworthiness of the Borrowers and of the Debtors, and that it did not rely upon any statement or representation by the Collateral Agent or any Lender with respect to Noteholder Liabilities, the Collateral, the Borrowers, the Debtors or otherwise in making any decisions with respect to this Agreement, the Note Purchase Agreement or otherwise.

(d) The Collateral Agent shall not collect any payments for the benefit of the Noteholders other than payments received from the disposition of the Collateral except as provided in the Intercreditor Agreement among the Lenders, the Noteholders and the Collateral Agent dated of even date herewith, as the same may be amended or supplemented from time to time the ("Intercreditor Agreement").

(e) The Collateral Agent shall remit to each Lender such Lender's Share (as defined below) and to each Noteholder such Noteholder's Share (as defined below), its ratable percentage of the proceeds received from the distribution of any Collateral without discrimination or preference, with any balance remaining after such distribution among the Lenders and the Noteholders to be distributed to whomever is entitled thereto, or as a court of competent jurisdiction may direct. With respect to each Lender, such Lender's Share means, with respect to any Lender as of any time, the quotient obtained by dividing (i) the sum of the outstanding principal amount of the Bank Liabilities at such time owed to such Lender and such Lender's percentage of the Letters of Credit outstanding under the Bank Credit Agreement, by (ii) the total outstanding Liabilities at such time, and subtracting therefrom, any unpaid amounts owed by such Lender to the Collateral Agent pursuant to subsection (g), (h) or (i) below. With respect to each Noteholder, such Noteholder's Share means the quotient obtained by dividing (A) the outstanding Noteholder Liabilities owed to such Noteholder at such time by (B) the total outstanding Liabilities at such time and subtracting therefrom, any unpaid amounts owed by such Noteholder to the Collateral Agent pursuant to subsection (g), (h) or (i) below. "Bank Liabilities" and "Liabilities" shall include, without limitation, any obligations of the Borrowers pursuant to any Hedge Agreements, as defined in the Bank Credit Agreement.

(f) Prior to any remittance thereof to Lenders or the Noteholders, any sums owed to any Lender or Noteholder hereunder shall be held in trust on behalf of such Lender or Noteholder; provided, however, no fiduciary relationship shall thereby be created between the Collateral Agent, and such Lender or Noteholder, and (subject in the case of the Lenders to the Bank Credit Agreement) the Collateral Agent's sole duties and responsibilities to the Lenders or Noteholders with respect to such sums or otherwise shall be as set forth in this Agreement.

(g) Each Lender and each Noteholder shall pay to the Collateral Agent, on demand, such Lender's or Noteholder's ratable share of the amount of any and all out-of-pocket expenses or costs (other than ordinary general and administrative expenses normally borne by the Collateral Agent), including, without limitation, attorneys', accountants', examiners', financial advisors', and auditors' fees and expenses and any indemnities (to the extent set forth in clause Subsection 22(h), below, incurred by the Collateral Agent in connection with the enforcement of this Security Agreement or the protection or preservation of the Collateral, for which the Collateral Agent is not reimbursed by or on behalf of the Borrowers or the Debtors. For purposes hereof, the Collateral Agent shall be deemed not to have been reimbursed by the Borrowers or the Debtors for any of the foregoing if payment of such costs or expenses is not made by or on behalf of the Borrowers or the Debtors upon demand by the Collateral Agent.

(h) In the event of the Debtors' failure to pay taxes, assessments, insurance premiums, claims against the Collateral, the Collateral Agent may, but shall not be obligated to, advance amounts necessary to pay the same, and each Lender and each Noteholder shall reimburse Agent for such Lender's or Noteholder's ratable share of the amount thereof on demand.

(i) Each Lender, each Noteholder and the Collateral Agent agrees to indemnify the Collateral Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, which may be imposed, incurred by or asserted against the Collateral Agent, in any way relating to or arising out of this Security Agreement, or any action taken or omitted by the Collateral Agent, under or in connection with the foregoing; provided, however, no Lender or Noteholder shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Collateral Agent's gross negligence or willful misconduct. The agreements in this Section shall survive repayment of the Liabilities and the termination of this Security Agreement.

23. Provisions Specific to B&W Heat Treating Corp.

(a) With respect to B&W Heat Treating Corp. ("B&W") only, the following sections of this Security Agreement shall be amended to read as set forth on Annex I attached hereto:

Section 1(b)  
Section 1(e)  
Section 1(m)

With respect to B&W certain new Sections set forth on Annex I are added to this Security Agreement.

[The remaining space intentionally left blank]

IN WITNESS WHEREOF, the Debtors have executed this instrument or have caused this instrument to be duly executed by their proper officers as of \_\_\_\_\_, 2005.

AIR VENT INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: 37-1016691

APPLETON SUPPLY CO., INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: 16-1546329

B&W HEAT TREATING CORP.

Address for notices:

c/o Gibraltar Industries, Inc.

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

3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Name:  
Title:

Telecopier No. (716) 826-1589

Province/County of Organization: Nova Scotia, Canada:

Address for notices:

B & W OF MICHIGAN, INC.

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: 20-0170132

Address for notices:

B&W LEASING, LLC

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: 20-0768478

Address for notices:

BRAZING CONCEPTS COMPANY

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

State of Organization: Michigan

Tax ID/Organizational Number: 38-3202445

Address for notices:

CAROLINA COMMERCIAL HEAT TREATING, INC.

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

State of Organization: Nevada

Tax ID/Organizational Number: 57-0510551

Address for notices:

CLEVELAND PICKLING, INC.

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028

By: \_\_\_\_\_  
Name:  
Title:

Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: 16-1323420

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: California

Tax ID/Organizational Number: 33-0467847

CONSTRUCTION METALS INC.

By: \_\_\_\_\_  
Name:  
Title:

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: 06-1217919

GIBRALTAT INTERNATIONAL, INC.

By: \_\_\_\_\_  
Name:  
Title:

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: \_\_\_\_\_

GIBRALTAR STRIP STEEL, INC.

By: \_\_\_\_\_  
Name:  
Title:

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: 20-0330038

GSCNY CORP.

By: \_\_\_\_\_  
Name:  
Title:

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028

HARBOR METAL TREATING CO.

By: \_\_\_\_\_  
Name:  
Title:



Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: Michigan

Tax ID/Organizational Number: 38-1614453

HARBOR METAL TREATING OF INDIANA, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

State of Organization: Michigan

Tax ID/Organizational Number: 38-2398534

HI-TEMP HEAT TREATING, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: 16-1570421

K & W METAL FABRICATORS, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

State of Organization: Colorado

Tax ID/Organizational Number: 84-0625442

PENNSYLVANIA INDUSTRIAL HEAT TREATERS, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

By: \_\_\_\_\_  
Name:  
Title:

Telecopier No. (716) 826-1589

State of Organization: Pennsylvania

Tax ID/Organizational Number: 25-1550765

SCM METAL PRODUCTS, INC.

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028

By: \_\_\_\_\_  
Name:  
Title:

Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: 20-1161055

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: 16-1544663

SOLAR GROUP, INC.

By: \_\_\_\_\_  
Name:  
Title:

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: Delaware

Tax ID/Organizational Number: 01-0638711

SOLAR OF MICHIGAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: Florida

Tax ID/Organizational Number: 59-1025796

SOUTHEASTERN METALS MANUFACTURING COMPANY, INC.

By: \_\_\_\_\_  
Name:  
Title:

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: Minnesota

Tax ID/Organizational Number: 41-0914525

UNITED STEEL PRODUCTS COMPANY, INC.

By: \_\_\_\_\_  
Name:  
Title:

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028

By: \_\_\_\_\_  
Name:  
Title:

WM. R. HUBBELL STEEL CORPORATION

Buffalo, NY 14219-0228

Telecopier No. (716) 826-1589

State of Organization: Illinois

Tax ID/Organizational Number: 36-3088188

Accepted and agreed to as of the date first above written.

2002 Noteholder:  
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

2004 Noteholders:  
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

By: \_\_\_\_\_  
Name:  
Title:

PRUCO LIFE INSURANCE COMPANY  
Name:  
Title:

Accepted and agreed to as of the date first above written.

KEYBANK NATIONAL ASSOCIATION,  
as Collateral Agent and Lender

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

JPMORGAN CHASE BANK, N.A.,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

HARRIS TRUST & SAVINGS BANK,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

HSBC BANK USA, NATIONAL ASSOCIATION,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

MANUFACTURERS AND TRADERS TRUST COMPANY,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

US BANK, NATIONAL ASSOCIATION,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

FLEET NATIONAL BANK, a  
as a Lender

By: \_\_\_\_\_  
Scott W. Vokey  
Vice President

Accepted and agreed to as of the date first above written.

NATIONAL CITY BANK,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

COMERICA BANK,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

**Schedule A  
To General Security Agreement**

**Subsidiary Guarantors**

Air Vent Inc.	Delaware
Appleton Supply Co., Inc	Delaware
B&W Heat Treating Corp.	Nova Scotia
B&W Leasing, LLC	Delaware
B & W of Michigan, Inc.	Delaware
Brazing Concepts Company	Michigan
Carolina Commercial Heat Treating, Inc.	Nevada
Cleveland Pickling, Inc.	Delaware
Construction Metals Inc.	California
Gibraltar International, Inc.	Delaware
Gibraltar Strip Steel, Inc.	Delaware
GSCNY Corp.	Delaware
Harbor Metal Treating Co.	Michigan
Harbor Metal Treating of Indiana, Inc.	Michigan
Hi-Temp Heat Treating, Inc.	Delaware
K & W Metal Fabricators, Inc.	Colorado
Pennsylvania Industrial Heat Treaters, Inc.	Pennsylvania
SCM Metal Products, Inc.	Delaware
Solar Group, Inc.	Delaware
Solar of Michigan, Inc.	Delaware
Southeastern Metals Manufacturing Company, Inc.	Florida
United Steel Products Company, Inc.	Minnesota
WM. R. Hubbell Steel Corporation	Illinois

## to General Security Agreement

(a) With respect to B&W Heat Treating Corp. ("B&W") only certain sections of the Security Agreement shall be amended and restated to read as follows:

(i) Section 1(b)

(b) The term "Collateral" means all of the Debtor's present and after acquired personal property including, without limitation, in all Goods (including all parts, accessories, attachments, special tools, additions and accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles, Money and Securities now owned or hereafter owned or acquired by or on behalf of the Debtor (including such as may be returned to or repossessed by the Debtor) and in all proceeds and renewals thereof, accretions thereto and substitutions therefor, and including, without limitation, all of the following now owned or hereafter owned or acquired by or on behalf of the Debtor:

(i) all Inventory of whatever kind and wherever situate;

(ii) all equipment (other than Inventory) of whatever kind and wherever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature or kind;

(iii) all Accounts and book debts and generally all debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (the "Debts");

(iv) all deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;

(v) all contractual rights and insurance claims;

(vi) all patents, industrial designs, trade secrets and know-how including without limitation environmental technology and biotechnology, confidential information, goodwill, copyrights, personality rights, plant breeders' rights, integrated circuit topographies, software, all customer and supplier lists;

(vii) all trade-marks and trade names, registered and unregistered.

(viii) all databases in whatever form and on whatever medium those databases are expressed, fixed, embodied or stored from time to time, and the copyright therein including the media upon or in which such databases are stored (the "Data");

(ix) all other intellectual and industrial property, and any registrations and applications for registration of any of the foregoing including, without limitation, all contractual rights, securities, instruments and other rights and benefits relating to such property (the collateral set forth in subsection (vi), (vii), (viii) and (ix) shall be collectively referred to as the "Intellectual Property").

The Security Interest granted hereby shall not extend or apply to and the Collateral shall not include the last day of the term of any lease of real estate or agreement therefor but upon the enforcement of the Security Interest, the Debtor shall stand possessed of such last day in trust to assign the same to any person acquiring such term.

(ii) Section 1(e)

(e) The term "Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, security interest, lien, charge or encumbrance, or preference, priority or other security agreement or preferential arrangement in respect of any asset of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the P.P.S.A. or comparable law of any jurisdiction).

(iii) Section 1(m)

(m) The terms "Goods", "Chattel Paper", "Document of Title", "Instrument", "Intangible", "Security", "proceeds", "Inventory", "accession", "Money", "Account", "financing statement" and "financing change statement" whenever used herein shall be interpreted pursuant to their respective meanings when used in the Personal Property Security Act of Ontario, as amended from time to time, which Act, including amendments thereto and any Act substituted therefor and amendments thereto is herein referred to as the "P.P.S.A.". Provided always that the term "Goods" when used herein shall not include "consumer goods" of the Debtor as that term is defined in the P.P.S.A.. "Security Interest" when used herein shall include the Security Interests granted under paragraph 2. The term "Collateral" when used herein shall include the Trademarks, the Data and the license agreements and any reference herein to the "Collateral" shall, unless the context otherwise requires, be deemed a reference to the "Collateral or any part thereof".

(b) With respect to B&W, the following new Sections are added to the Security Agreement:

24. Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default, the Collateral Agent may appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of the Collateral Agent or not, to be a receiver or receivers (hereinafter called the "Receiver", which term when used herein shall include a receiver and manager) of the Collateral (including any interest, income or profits therefrom) and may remove any Receiver so appointed and appoint another in his stead. Any such Receiver shall, so far as concerns responsibility for his acts, be deemed the agent of the Debtor and not of the Collateral Agent, and the Collateral Agent shall not be in any way responsible for any misconduct, negligence, or non-feasance on the part of any such Receiver, his servants, agents or employees. Subject to the provisions of the instrument appointing him, any such Receiver shall have power to take possession of the Collateral, to preserve the Collateral or its value, to carry on or concur in carrying on all or any part of the business of the Debtor and to sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of the Collateral. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including the Debtor, enter upon, use and occupy all premises owned or occupied by the Debtor wherein the Collateral may be situate, maintain the Collateral upon such premises, borrow money on a secured or unsecured basis and use the Collateral directly in carrying on the Debtor's business or as security for loans or

advances to enable him to carry on the Debtor's business or otherwise, as such Receiver shall, in his discretion, determine. Except as may be otherwise directed by the Collateral Agent or the Requisite Lenders, all monies received from time to time by such Receiver in carrying out his appointment shall be received in trust for and paid over to the Collateral Agent or its successors or assigns for the benefit of the Secured Lender Group. Every such Receiver may, in the discretion of the Collateral Agent for itself, and as agent for the Secured Lender Group, be vested with all or any of the rights and powers of the Collateral Agent.

(b) Upon the occurrence of and during the continuance of an Event of Default, the Collateral Agent may, and upon direction of the Requisite Lenders shall, either directly or through its agent or nominees, exercise any or all of the powers and rights given to a Receiver by virtue of the foregoing sub-clause (a).

(c) Upon the occurrence of and during the continuance of an Event of Default, the Collateral Agent may and, upon direction of the Requisite Lenders shall, take possession of, collect, demand, sue on, enforce, recover and receive the Collateral and give valid and binding receipts and discharges therefor and in respect thereof and, upon the occurrence of and during the continuance of an Event of Default, the Collateral Agent may and, upon direction of the Requisite Lenders shall, sell, lease or otherwise dispose of the Collateral in such manner, at such time or times and place or places, for such consideration and upon such terms and conditions as to the Collateral Agent may seem reasonable.

(d) In addition to those rights granted herein and in any other agreement now or hereafter in effect between the Debtor and the Collateral Agent or the Lenders or the Noteholders and in addition to any other rights the Collateral Agent or the Secured Lender Group may have at law or in equity, the Collateral Agent shall have, both before and after the occurrence of an Event of Default, all rights and remedies of a secured party under the P.P.S.A. Provided always, that the Collateral Agent shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease or otherwise dispose of the Collateral or to institute any proceedings for such purposes. Furthermore, the Collateral Agent shall have no obligation to take any steps to preserve rights against prior parties to any Instrument or Chattel Paper whether the Collateral or proceeds and whether or not in the Collateral Agent's possession and shall not be liable or accountable for failure to do so.

(e) The Debtor acknowledges that the Collateral Agent or any Receiver appointed by it may upon the occurrence of and during the continuance of an Event of Default, take possession of the Collateral wherever it may be located and by any method permitted by law and, in such event, the Debtor agrees upon request from the Collateral Agent or any such Receiver to assemble and deliver possession of the Collateral at such place or places as directed.

(f) The Debtor agrees to pay all costs, charges and expenses incurred by the Collateral Agent or any Receiver appointed by it, whether directly or for services rendered (including reasonable solicitors' and accountants' costs and other legal expenses and Receiver remuneration), in operating the Debtor's accounts, in preparing or enforcing this Security Agreement, taking custody of, preserving, repairing, processing, preparing for disposition and disposing of the Collateral and in enforcing or collecting Indebtedness and all such costs, charges and expenses, together with any monies owing as a result of any borrowing by the Collateral Agent or any Receiver appointed by it, as permitted hereby, shall be a first charge on the proceeds of realization, collection or disposition of the Collateral and shall be secured hereby.

(g) The Collateral Agent will give the Debtor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of the Collateral is to be made, as may be required by the P.P.S.A.

(h) Upon the occurrence of and the continuance of an Event of Default, the Debtor shall, at the request of the Collateral Agent, take such further action as may be necessary to evidence and effect an assignment or licensing of the Intellectual Property to the Collateral Agent or any other party that the Collateral Agent may direct.

## 25. General Provisions.

(a) It is hereby agreed that The Limitation of Civil Rights Act of the Province of Saskatchewan, or any provision thereof, shall have no application to this Security Agreement or any agreement or instrument renewing or extending or collateral to this Security Agreement. In the event that the Debtor is an agricultural corporation within the meaning of The Saskatchewan Farm Security Act, the Debtor agrees with the Collateral Agent that all of Part IV (other than Section 46) of that Act shall not apply to the Debtor.

(b) This Security Agreement and the transactions evidenced hereby shall be governed by and construed in accordance with the laws of the province of Ontario and the laws of Canada applicable therein. The Debtor and the Collateral Agent or its successors or assigns irrevocably submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and of Canada sitting in Ontario in any action or proceeding arising out of or relating to this agreement and irrevocably agrees that all such actions and proceedings may be heard and determined in such courts. The Debtor and the Collateral Agent or its successors or assigns irrevocably waive, to the fullest extent possible, the defense of an inconvenient forum. The Debtor and the Lenders and Noteholders agree that a judgment or order in any action or proceeding contemplated in this Section 23(i) may be enforced in any jurisdiction in any manner provided by law. For greater certainty, the Collateral Agent or its successors or assigns may serve legal process in any manner permitted by law and may bring an action or proceeding against the Debtor or the property or assets of the Debtor in the courts of any jurisdiction to the extent permitted by applicable law.

## 26. Copy of Agreement and Financing Statement.

(a) The Debtor hereby acknowledges receipt of a copy of this Security Agreement.

(b) The Debtor waives the Debtor's right to receive a copy of any financing statement or financing change statement registered by the Collateral Agent, or of any verification statement with respect to any financing statement or financing change statement registered by the Collateral Agent.

## 27. Debtor Address.

The Debtor represents and warrants that the following information is accurate:

NAME OF BUSINESS COMPANY	CITY	PROVINCE	POSTAL CODE
60 Steckle Place	Kitchener	Ontario	N2E 2C3 N2E 3J3

Exhibit C-3

PLEDGE SECURITY AGREEMENT

The undersigned, GIBRALTAR STEEL CORPORATION OF NEW YORK, a New York corporation (the "Pledgor") executes and delivers this Pledge Security Agreement (the "Agreement") to KEYBANK NATIONAL ASSOCIATION, having an office located at KeyCenter, 127 Public Square, Cleveland, Ohio 44114, as collateral agent for the Lenders (as defined below) and the Noteholders (as defined below) (the "Collateral Agent"; the Agent, the Lenders and the Noteholders being collectively referred to herein as the "Secured Lender Group" and individually as a "Secured Party") in consideration of one or more loans, letters of credit or other financial accommodation made, issued or extended by the Lenders or the Noteholders to the Borrowers (as defined below). Accordingly, the Collateral Agent shall have the rights, remedies and benefits hereinafter set forth.

1. Definitions.

(a) The term "Bank Liabilities" means and includes (i) any and all indebtedness, obligations and liabilities of Gibraltar Industries, Inc. (the "Company" and together with the Pledgor, collectively, the "Borrowers") and/or the Pledgor to any of the Lenders and/or KeyBank National Association, as administrative agent (the "Agent") and also to others to the extent of their participations granted to or interests therein created or acquired for them by the Lenders or the Agent, arising under that certain Credit Agreement dated of even date herewith among the Borrowers, KeyBank National Association as Administrative Agent, Swingline Lender, Letter of Credit Issuer, Lead Arranger and Book Runner, JPMorgan Chase Bank, N.A. as Syndication Agent and Letter of Credit Issuer, Harris Trust and Savings Bank as Co-Documentation Agent, HSBC Bank USA, National Association as Co-Documentation Agent, Manufacturers and Traders Trust Company as Co-Documentation Agent and the Lenders named therein (individually a "Lender" and collectively, the "Lenders"), as the same may be amended, modified, supplemented, restated or replaced from time to time (the "Bank Credit Agreement"), (ii) any and all indebtedness, obligations and liabilities of the Borrowers to any of the Lenders and/or the Agent and also to others to the extent of their participations granted to or interests therein created or acquired by them for the Lenders or the Agent, and the Secured Documents (as defined below), including Hedge Agreements (as defined in the Bank Credit Agreement) executed in connection therewith and (iii) any and all indebtedness, obligations and liabilities of each of the Borrowers or any Subsidiary Guarantor arising under any Secured Document to which it is a party, in the case of clause (i), (ii) or (iii) above, now or hereafter existing, arising directly between Borrowers and the Lenders or the Agent or acquired outright, conditionally, as a participation or as collateral security from another by the Lenders or the Agent, absolute or contingent, joint and/or several, secured or unsecured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, direct or indirect.

(b) The term "Collateral" means all property in which the Borrower grants a security interest pursuant to the "Grant of Security Interest" paragraph set forth below.

(c) The term "Enforcement" means taking any action seeking remedies with respect to the Collateral, pursuing enforcement (judicial or otherwise) with respect to any of the Liens granted under any of the Secured Documents or filing any involuntary petition of bankruptcy or similar action with respect to any Borrower or any Subsidiary Guarantor.

(d) The term "Event of Default" means (i) any Event of Default under the Bank Credit Agreement, or (ii) any Event of Default under the Note Purchase Agreement.

(e) The term "Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, security interest, lien, charge or encumbrance, or preference, priority or other security agreement or preferential arrangement in respect of any asset of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

(f) The term "Liabilities" means, collectively, the Bank Liabilities and the Noteholder Liabilities.

(g) The term "Noteholder Liabilities" means and shall include (i) any and all indebtedness, obligations and liabilities (including, without limitation, any Make Whole Amount (as defined in the 2002 Note Purchase Agreement)) of Gibraltar Steel Corporation of New York to any holder of the 7.35% Senior Secured Notes ("2002 Notes") of the Company (formerly known as Gibraltar Steel Corporation) due July 3, 2007, in the aggregate principal amount of \$25,000,000 and also to others to the extent of their participations granted to or interests therein created or acquired for them by the 2002 Noteholders arising under that certain 2002 Note Purchase Agreement dated as of July 3, 2002 among the Borrowers and any purchaser thereof (individually, a "2002 Noteholder" and collectively, the "2002 Noteholders"), as amended and restated pursuant to an Amended and Restated Note Purchase Agreement of even date herewith and as the same may be further amended, modified, supplemented, restated or replaced from time to time (the "2002 Note Purchase Agreement"), (ii) any and all indebtedness, obligations and liabilities (including, without limitation, any Make Whole Amount (as defined in the 2004 Note Purchase Agreement)) of Gibraltar Steel Corporation of New York to any holder of the 5.75% Senior Secured Notes ("2004 Notes") of the Company due June 17, 2011, in the aggregate principal amount of \$75,000,000 and also to others to the extent of their participations granted to or interest therein created or acquired for them by the 2004 Noteholders arising under that certain Note Purchase Agreement dated as of June 18, 2004 among the Borrowers and any purchaser thereof (individually, a "2004 Noteholder" and collectively, the "2004 Noteholders" and collectively with the 2002 Noteholders, the "Noteholders"), as amended and restated pursuant to an Amended and Restated Note Purchase Agreement of even date herewith and as the same may be further amended, modified, supplemented, restated or replaced from time to time (the "2004 Note Purchase Agreement" and collectively with the 2002 Note Purchase Agreement, the "Note Purchase Agreement"), (iii) any and all indebtedness, obligations and liabilities of the Borrowers to any of the Noteholders and also to others to the extent of their participations granted to or interests therein created or acquired by them for the Noteholders, under any Secured Document to which it is a party, and (iv) any and all indebtedness, obligations and liabilities of each of the Borrowers, or any Subsidiary Guarantor arising under any Secured Document to which it is a party, in the case of clause (i), (ii), (iii) or (iv) above, now or hereafter existing, arising directly between the Borrowers and the Noteholders or acquired outright, conditionally, as a participation or as collateral security from another by the Noteholders, absolute or contingent, joint and/or several, secured or unsecured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, direct or indirect.

(h) The term "Obligor" means the Borrowers and any maker, drawer, acceptor, indorser, guarantor, surety, accommodation party or other person liable upon or for any of the Liabilities or Collateral.

(i) The term "Requisite Lenders" means the Secured Parties which hold at least 51% of the outstanding Liabilities.

(j) The term "Secured Document" means collectively (a) this Agreement, (b) the Bank Credit Agreement and any document executed and delivered in connection therewith and (c) the Note Purchase Agreement any other Related Document, as defined in the Note Purchase Agreement.

(k) The term "Subsidiary Guarantors" means collectively, each Subsidiary of the Borrowers set forth on Schedule A attached hereto executing and delivering to the Agent for the benefit of the Lenders and to the Noteholders a guaranty dated of even date herewith guarantying the payment of the Bank Liabilities and the Noteholder Liabilities respectively and each other Subsidiary of the Borrowers which subsequent to the date hereof, executes and delivers to the Agent for the benefit of the Lenders and to the Noteholders, a joinder to such guaranty of payment of the Bank Liabilities and the Noteholder Liabilities respectively.

(l) The term "Uniform Commercial Code" means the Uniform Commercial Code in effect in the State of New York from time to time.

(m) Unless the context otherwise requires, all terms used herein which are defined in the Uniform Commercial Code shall have the meanings therein stated.

2. **Grant of Security Interest.** As security for the payment of the Liabilities, the Pledgor hereby grants to the Collateral Agent for the benefit of the Secured Lender Group and the Collateral Agent a security interest in, a general lien upon the following Collateral and in all increases, profits or rights received from it, in all substitutions and additions together with any proceeds:

sixty-five percent (65%) of all issued and outstanding stock of Renown Specialties Company Ltd., an Ontario corporation, as evidenced by Stock Certificate No. C-2 for sixty-five (65) shares.

The Pledgor agrees that the Collateral Agent's records will be the accurate record of any substitutions in and additions to the Collateral.

3. **Covenants.** As long as any part of the Liabilities remain unpaid the Pledgor agrees to:

(a) defend the Collateral against all claims, keep the collateral free from other security interests and not dispose of any portion of the Collateral without the Collateral Agent's written consent;

(b) notify the Collateral Agent promptly of any changes in the Pledgor's name or address;

(c) notify the Collateral Agent of any change in legal entity structure, if applicable;

(d) execute and deliver any financing statements or other documents, pay any costs of title searches and filing fees, and take any other action the Collateral Agent requests in relation to the security interest;

(e) pay all taxes and other charges which may be levied against the Collateral.

4. **Warranties.** As long as any part of the Liabilities remain unpaid the Pledgor warrants to the Collateral Agent and the Lenders that:

(a) each document representing the Collateral is genuine;

(b) the Pledgor owns the Collateral;

(c) the Pledgor is fully authorized to enter into this Agreement;

(d) the Collateral is fully paid and non-assessable.

5. **Voting Rights.** So long as no Event of Default occurs, the Collateral Agent will mail the Pledgor all communications and proxies addressed to the Collateral Agent, within a reasonable time. After the occurrence and during the continuation of an Event of Default, the Collateral Agent does not have to send the Pledgor further communications and any proxies issued by the Pledgor will be invalid. Upon the occurrence and during the continuation of an Event of Default, the Collateral Agent shall then have the right to vote in person or by proxy without any direction from the Pledgor.

6. **Default.** After the occurrence and during the continuation of an Event of Default, unless and to the extent that the Collateral Agent, at its discretion or upon direction of the Requisite Lenders, shall otherwise elect, all of the Liabilities shall become and be due and payable forthwith. **THE RIGHTS OF THE COLLATERAL AGENT SET FORTH IMMEDIATELY ABOVE ARE WITHOUT LIMITATION OF, AND IN ADDITION TO, ANY OTHER RIGHT OF THE COLLATERAL AGENT OR ANY SECURED PARTY UNDER ANY OTHER DOCUMENT EVIDENCING OR EXECUTED IN CONNECTION WITH THE LIABILITIES (INCLUDING BUT NOT LIMITED TO ANY RIGHT OF ACCELERATION OF PAYMENT PURSUANT TO THE PROVISIONS THEREOF OR ANY RIGHT OF THE COLLATERAL AGENT OR ANY SECURED PARTY TO MAKE DEMAND FOR PAYMENT THEREUNDER WITHOUT REFERENCE TO ANY PARTICULAR CONDITION OR EVENT).**

7. **Enforcement With Respect to Collateral.**

(a) **Notice/Enforcement.** The Required Lenders (as defined in the Bank Credit Agreement) or Required Holders (as defined in the Note Purchase Agreement) shall have the right to deliver a notice to the Collateral Agent to the extent an Event of Default shall have occurred under their respective Secured Documents. Upon and after the delivery to the Collateral Agent of (i) any such notice, and (ii) the written direction of the Requisite Lenders to undertake Enforcement, the Collateral Agent shall proceed to protect and enforce rights or remedies granted hereunder, as so directed, either by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein or in any other Secured Document, or to enforce any other legal or equitable right or remedy provided herein or therein. The Collateral Agent shall give written notice to each Lender and each Noteholder as to any such Enforcement it may take under the Secured Documents. Other than actions necessary to prevent the waste, diminution, impairment or loss of any Collateral which could not reasonably be taken through notice or instruction to the Collateral Agent, each Secured Party hereby agrees that it shall not take any action of Enforcement in respect of or effecting Collateral or claims or demands made or notices given hereunder except through the delivery or written instructions by the Requisite Lenders to the Collateral Agent.

(b) **Dividends/Income.** So long as no Event of Default occurs, the Pledgor shall have the right to receive all cash income from the Collateral. If the Collateral Agent receives any cash income before the occurrence of an Event of Default, the Collateral Agent agrees to turn such income over to the Pledgor. Once an Event of Default occurs and for so long as such Event of Default continues, the Pledgor



will no longer be entitled to receive any cash income and if the Pledgor receives any such income, the Pledgor agrees to turn such income over to the Collateral Agent. The Collateral Agent may apply the net cash payments to the Liabilities as set forth herein but the Collateral Agent will account for it and pay over to the Pledgor any cash which remains on hand after the Liabilities are satisfied. All payments received by the Collateral Agent consisting of proceeds of the Collateral shall be applied FIRST, to the reasonable expenses incurred by the Collateral Agent in connection with any or all of the retaking, holding, storing, preserving, processing, maintaining, advertising, preparing for or consummating any sale, lease or other disposition of, the Collateral, including trustee's fees and commissions, court costs and reasonable attorney's fees and legal expenses pertaining thereto, SECOND, to each Lender in accordance with such Lender's Share (as defined in Section 22 below) and to each Noteholder in accordance with such Noteholder's Share (as defined in Section 22 below); provided however, amounts allocable to undrawn Letters of Credit shall be distributed to the Contingent Collateral Account, as defined in Section 13, below; and THIRD, any surplus remaining after application as provided for herein, to the Pledgor.

(c) **Disposition.** With respect to any Collateral in its possession, the Collateral Agent or any of its agents, associates or correspondents, may after the occurrence and during the continuation of an Event of Default, sell or cause to be sold at any location selected by it and reasonable under the circumstances, in one or more sales, at such price as the Collateral Agent may deem best, and for cash or on credit or for future delivery, without assumption of any credit risk, all or any of the Collateral, at any broker's board or at public or private sale, in any reasonable manner permissible under the Uniform Commercial Code (except that, to the extent permitted thereunder, the Pledgor hereby waives the requirements of said Code), and the Collateral Agent or any of the Lenders or any of the Noteholders or anyone else may be the purchaser of any or all of the Collateral so sold and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity or redemption, of the Pledgor, any such demand, notice or right and equity being hereby expressly waived and released. The Collateral Agent (i) shall comply with any applicable law requirements in connection with the disposition of the Collateral, (ii) may sell the Collateral without giving any warranties, and any of such actions or inaction will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. The Pledgor will pay to the Collateral Agent all expenses (including reasonable attorneys' fees and legal expenses incurred by the Collateral Agent or any of the Lenders or Noteholders) of, or incidental to, the enforcement of any of the provisions hereof or of any of the Liabilities, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement of any of the Collateral. Notwithstanding that the Collateral Agent, whether in its own behalf and/or on behalf of another or others, may continue to hold the Collateral and regardless of the value thereof, the Pledgor shall be and remain liable for the payment in full, principal and interest, of any balance of the Liabilities at any time unpaid. The Collateral Agent may exercise its rights with respect to the Collateral without resorting to or regard to other collateral or sources of reimbursement for the Liabilities.

8. **Waivers of Rights.** Except as otherwise expressly set forth herein, until the payment in full of the Liabilities, each Lender and each Noteholder hereby waives any and all rights each may individually (i.e., other than through a Collateral Agent) now or hereafter have to exercise any right pursuant to this Agreement or under the laws of any applicable jurisdiction or otherwise to dispose of or retain any of the Collateral. Each of them hereby agrees not to take any action whatsoever to enforce any term or provision of this Agreement or to enforce any right with respect to the Collateral in conflict with the provisions of this Agreement. Nothing set forth above or otherwise contained in this Agreement shall be interpreted as a waiver of any rights of setoff (by contract, law or otherwise) of any Secured Party; provided that any amount received by such setoff shall be delivered to the Collateral Agent and distributed in accordance with Subsection 7(b) above.

9. **Permitted Action.** Any Secured Party may, without instruction from the Collateral Agent, but in no event shall be required to, take action permitted by applicable law or in accordance with the terms of this Agreement or any other Secured Document to preserve (but not enforce or possess) its rights and Liens in the Collateral securing the payment and performance of the Liabilities, including but not limited to curing any default or alleged default under any contract entered into by any Borrower, paying any tax, fee or expense on behalf of any Borrower, exercising any offset or recoupment rights and paying insurance premiums on behalf of any Borrower, so long as such action shall not impair the rights of the Collateral Agent or of any Secured Party or otherwise be contrary to the terms of this Agreement.

10. **Instruction of Collateral Agent/Release of Collateral.** The Collateral Agent shall not exercise any or all rights and remedies afforded the Collateral Agent hereunder unless and until such Collateral Agent shall receive written instructions from the Requisite Lenders, unless the Collateral threatens to speedily decline in value, in which instance the Collateral Agent may (but shall not be obligated to) proceed to enforce such rights against the Collateral for the protection of, and in the best interests of, the applicable Secured Parties prior to receiving such written instruction. The Collateral Agent shall not release any of the Collateral from the Lien granted hereunder without the prior written consent of the Requisite Lenders, except to the extent that the Borrowers are permitted to sell or transfer such Collateral under the terms of the Bank Credit Agreement and the Note Purchase Agreement.

11. **Pari Passu.** Each Secured Party acknowledges and agrees that the Liabilities share the Lien and benefit and priority of, in and to this Agreement and the Collateral, and share all payments made with respect thereto, on a pari passu basis.

12. **Further Assurances.** Each of the parties hereto agrees to execute and deliver all such further documents and instruments and to use its best efforts to take all such further action as may be reasonably necessary or advisable to implement and give effect to the transactions contemplated hereby. Each Secured Party will from time to time provide such information that is available to it to the Collateral Agent as may be necessary to enable the Collateral Agent to make any calculation hereunder or otherwise required for any other purpose hereof. Each Secured Party will from time to time consult with the Collateral Agent and any other Secured Party in good faith regarding the Enforcement of its rights with a view to recovering amounts due under any of the Secured Documents.

13. **Cash Collateral for Contingent Obligations.** To the extent any proceeds are received by the Collateral Agent in respect of Bank Liabilities that are attributable to Letters of Credit and/or Hedge Agreements (as defined in the Bank Credit Agreement), such proceeds shall be deposited into an account held by the Collateral Agent (a "Contingent Collateral Account"), for distributions as set forth in Section 13. Upon the request of the Agent on behalf of the Lenders, the Collateral Agent shall deliver to the Agent from the Contingent Collateral Account, to the extent sufficient funds are held therein, the amount of any unpaid reimbursement obligations of the Borrowers pursuant to Section 3.3 of the Bank Credit Agreement, with respect to any Letter of Credit or amount due and owing with respect to a Hedge Agreement. If any Letter of Credit expires, is reduced, is cancelled or the stated amount thereof is otherwise reduced, or a Hedge Agreement, is cancelled or terminates with the result that the Bank Liabilities are reduced, then an amount equal to the amount of such reduction in such Bank Liabilities shall be distributed from the Contingent Collateral Account by the Collateral Agent for further distribution to the other Secured Parties in accordance with Subsection 7(b) in the amounts they would have received had such expired, reduced or cancelled Letter of Credit or Hedge Agreement had not been included in the calculation of Bank Liabilities with respect to prior distributions. The Collateral Agent shall from time to time invest amounts held in the Contingent Collateral Account as directed by the Agent, or, if the Agent shall have not so directed, in a money market or sweep account of the Collateral Agent in accordance with its investment policies for similar accounts.

14. **General Waivers.** The Pledgor hereby waives presentment, notice of dishonor and protest of the Secured Documents. The Pledgor waives all demands, notices and protests of every kind which are not expressly required under this Agreement which are permitted by law to be waived, and which would, if not waived, impair the Collateral Agent's enforcement of this Agreement or release any Collateral from the

**Collateral Agent's security interest hereunder. By way of example, but not in limitation of the Collateral Agent's rights under this Agreement, the Collateral Agent does not have to give the Pledgor notice of any of the following:**

- (a) notice of acceptance of this Agreement;
- (b) notice of loans made, credit extended, Collateral received or delivered;
- (c) any Event of Default;
- (d) any action which the Collateral Agent does or does not take regarding the Borrowers, or any other person or any other collateral securing the Liabilities;
- (e) except as otherwise provided herein, enforcement of this Agreement against the Collateral; or
- (f) any other action taken in reliance on this Agreement.

The Pledgor waives all rules of suretyship law and any other law whatsoever which is legally permitted to be waived and which would, if not waived, impair the Collateral Agent's enforcement of its security interests. The Pledgor waives any right to notice of any action the Collateral Agent may take with respect to the Collateral. By way of example, but not in limitation of the Collateral Agent's rights under this Agreement, and without affecting the liability of the Pledgor to the Collateral Agent, the Collateral Agent or the Lenders, as set forth in the Bank Credit Agreement or the Noteholders, as set forth in the Note Purchase Agreement, as the case may be, may do any of the following without notice to the Pledgor except to the extent that notice to the Pledgor is required under another Secured Document or in each case in which the agreement of the Pledgor is required because the Pledgor is a principal party to a Liability and, as a matter of contract, the agreement of the Pledgor is required:

- (a) change, renew or extend the time for repayment of all or any part of the Liabilities;
- (b) change the rate of interest or any other provisions with respect to all or any part of the Liabilities;
- (c) release, surrender, sell or otherwise dispose of any money or property which is in the Collateral Agent's possession as collateral security for the Liabilities;
- (d) fail to perfect any security interest in any Collateral;
- (e) delay or refrain from exercising any of the Collateral Agent's, Lenders' or Noteholders' rights;
- (f) settle or compromise any and all claims pertaining to the Liabilities and the Collateral;
- (g) apply any money or property of the Pledgor or that of any other party liable to the Collateral Agent for any part of the Liabilities in any order the Collateral Agent or the Lenders or the Noteholders, as applicable, choose; and
- (h) release or discharge any party liable to the Collateral Agent in whole or in part for the Liabilities or accept any additional parties or guarantors.

**THE PLEDGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT OR ANY SECURED DOCUMENT, AND AGREES THAT ANY SUCH DISPUTE SHALL, AT THE COLLATERAL AGENT'S OPTION, BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.**

**IN ADDITION, THE PLEDGOR WAIVES THE RIGHT TO INTERPOSE ANY DEFENSE BASED UPON ANY STATUTE OF LIMITATIONS OR ANY CLAIM OF DELAY BY THE COLLATERAL AGENT AND ANY SET OFF OR COUNTERCLAIM OF ANY NATURE OR DESCRIPTION.**

**15. Custody of Collateral.** The Collateral Agent agrees to use reasonable care to protect any Collateral in its possession. However, the Collateral Agent shall not be required to:

- (a) vote the stock;
- (b) collect any debt;
- (c) exercise any conversion rights;
- (d) take any steps necessary to preserve rights against prior parties;
- (e) notify the Pledgor of any maturities, calls, conversions, or other similar matters concerning the Collateral, except for forwarding to the Pledgor those communications which are addressed to the Pledgor;
- (f) act upon any request the Pledgor may send the Collateral Agent.

**16. Changes in Collateral.** Whether or not an Event of Default has occurred, the Pledgor authorizes the Collateral Agent to:

- (a) receive and hold as additional collateral any non-cash increases in or profits on the Collateral; and
- (b) surrender the Collateral and receive any payment or distribution upon redemption, dissolution or liquidation of the issuer of the Collateral.

If the Pledgor receives any of the payments or distributions described above, the Pledgor agrees to turn them over to the Collateral Agent.

**17. Further Assurances.** The Pledgor appoints the Collateral Agent as its attorney to take any necessary steps, including the filing of financing statements, to perfect the Collateral Agent's or any Secured Party's security interest without first obtaining the Pledgor's signature. Upon the Collateral Agent's request, the Pledgor will execute any amendments, including UCC-3 forms, which are necessary to perfect and

continue the Collateral Agent's or any Secured Party's security interest in the Collateral. The Pledgor agrees that it will (i) cause the issuer of the Collateral not to issue any stock, units or other securities in addition to or in substitution for the Collateral issued by such issuer, except to the Pledgor and (ii) pledge hereunder, immediately upon its acquisition (directly or indirectly) thereof, such additional shares of stock or other securities of the issuer of the Collateral as may be necessary to ensure that at all times sixty-five percent (65%) of the shares of stock or other securities of the issuer of the Collateral are pledged in favor of the Collateral Agent for the benefit of the Secured Lender Group and the Collateral Agent.

18. **Fees and Expenses.** The Pledgor agrees to pay all of the Collateral Agent's costs, including reasonable attorneys' fees for necessary court process in enforcing this Agreement or realizing upon the Collateral.

19. **Modification.** This Agreement cannot be modified except by a written agreement.

20. **Notices.** All notices, requests, demands or other communications to or upon the Pledgor or the Collateral Agent shall be in writing and shall be deemed to be delivered upon receipt if delivered by hand or overnight courier or five days after mailing to the address (a) of the Borrower set forth below the Pledgor's execution of this Agreement, (b) of the Collateral Agent as first set forth above, with a copy to the Noteholders at the address set forth in the Note Purchase Agreement or (c) of the Pledgor or the Collateral Agent at such other address as the Pledgor or the Collateral Agent shall specify to the other in writing.

21. **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The Pledgor consents to the nonexclusive jurisdiction and venue of the state or federal courts located in such state. In the event of a dispute hereunder, suit may be brought against the Pledgor in such courts or in any jurisdiction where the Pledgor or any of its assets may be located. Service of process by the Collateral Agent in connection with any dispute shall be binding on the Pledgor if sent to the Pledgor by registered mail at the address specified below or to such further address as the Pledgor may specify to the Collateral Agent in writing.

22. **Appointment of Collateral Agent.**

(a) Each Noteholder and each Lender hereby appoints the Collateral Agent to act as its agent in connection with the administration of the Collateral. The Collateral Agent shall hold all Collateral for the benefit of the Secured Lender Group. The Collateral Agent may perform any of its functions and duties under this Agreement by or through any agents or any of its directors, officers or employees. In performing any of its functions and duties under this Agreement, the Collateral Agent shall not be deemed to be acting as a trustee for, or partner of, the Lenders or the Noteholders or to have assumed any relationship of agency, trust or partnership with or for the Pledgor. The Collateral Agent may resign at any time by giving written notice thereof to all the Lenders, the Noteholders and the Pledgor. Upon such resignation, the Requisite Lenders shall have the right to appoint a successor Collateral Agent. If no successor Collateral Agent shall have been so appointed by the Requisite Lenders, and shall have accepted such appointment within thirty (30) days after the retiring Collateral Agent's giving of notice of resignation, then the retiring Collateral Agent may, on behalf of all the Secured Parties, appoint a successor Collateral Agent. Such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, duties and obligations of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations thereafter under this Agreement. The Collateral Agent shall continue to perform its duties hereunder until a successor Collateral Agent shall have been appointed and accepts such appointment in writing. After any retiring Collateral Agent's resignation, the provisions of this Section 22, including, without limitation, the indemnity provisions of Subsection 22(h) hereof, shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement.

(b) The Collateral Agent makes no representation or warranty with respect to, and assumes no responsibility for (a) the validity, genuineness, legality, enforceability, sufficiency, or due execution of this Agreement against the Pledgor, (b) the existence or value of any of the Collateral, (c) any representations or warranties made by or on behalf of the Borrowers, (d) any obligations to be performed or observed by the Borrowers under the terms of the Bank Credit Agreement, the Note Purchase Agreement, this Agreement and any other document executed and delivered in connection with any of the foregoing, (e) the collectibility of the Liabilities, or (f) the financial condition of the Borrowers.

(c) Each of the Noteholders represents, warrants, and acknowledges that it has independently reviewed and approved all financial and other information necessary to make an independent decision with respect to the Noteholder Liabilities, this Agreement, and the creditworthiness of the Borrowers, and that it did not rely upon any statement or representation by the Collateral Agent or any Lender with respect to Noteholder Liabilities, the Collateral, the Borrowers, or otherwise in making any decisions with respect to this Agreement, the Note Purchase Agreement or otherwise.

(d) The Collateral Agent shall not collect any payments for the benefit of the Noteholders other than payments received from the disposition of the Collateral except as provided in the Intercreditor Agreement among the Lenders, the Noteholders and the Collateral Agent dated of even date herewith, as the same may be amended or supplemented from time to time the "Intercreditor Agreement").

(e) The Collateral Agent shall remit to each Lender such Lender's Share (as defined below) and to each Noteholder such Noteholder's Share (as defined below), its ratable percentage of the proceeds received from the distribution of any Collateral without discrimination or preference, with any balance remaining after such distribution among the Lenders and the Noteholders to be distributed to whomever is entitled thereto, or as a court of competent jurisdiction may direct. With respect to each Lender, such Lender's Share means, with respect to any Lender as of any time, the quotient obtained by dividing (i) the sum of the outstanding principal amount of the Bank Liabilities at such time owed to such Lender and such Lender's percentage of the Letters of Credit outstanding under the Bank Credit Agreement, by (ii) the total outstanding Liabilities at such time, and subtracting therefrom, any unpaid amounts owed by such Lender to the Collateral Agent pursuant to Subsection (g) or (h) below. With respect to each Noteholder, such Noteholder's Share means the quotient obtained by dividing (A) the outstanding Noteholder Liabilities owed to such Noteholder at such time by (B) the total outstanding Liabilities at such time and subtracting therefrom, any unpaid amounts owed by such Noteholder to the Collateral Agent pursuant to Subsection (g) or (h) below. "Bank Liabilities" and "Liabilities" shall include, without limitation, any obligations of the Borrowers pursuant to any Hedge Agreements, as defined in the Bank Credit Agreement.

(f) Prior to any remittance thereof to Lenders or the Noteholders, any sums owed to any Lender or Noteholder hereunder shall be held in trust on behalf of such Lender or Noteholder; provided, however, no fiduciary relationship shall thereby be created between the Collateral Agent, and such Lender or Noteholder, and (subject in the case of the Lenders to the Bank Credit Agreement) the Collateral Agent's sole duties and responsibilities to the Lenders or Noteholders with respect to such sums or otherwise shall be as set forth in this Agreement.

(g) Each Lender and each Noteholder shall pay to the Collateral Agent, on demand, such Lender's or Noteholder's ratable share of the amount of any and all out-of-pocket expenses or costs (other than ordinary general and administrative expenses normally borne by the Collateral Agent), including, without limitation, attorneys', accountants', examiners', financial advisors', and auditors' fees

and expenses and any indemnities (to the extent set forth in Subsection 22(h), below, incurred by the Collateral Agent in connection with the enforcement of this Agreement or the protection or preservation of the Collateral, for which the Collateral Agent is not reimbursed by or on behalf of the Borrowers. For purposes hereof, the Collateral Agent shall be deemed not to have been reimbursed by the Borrowers for any of the foregoing if payment of such costs or expenses is not made by or on behalf of the Borrowers upon demand by the Collateral Agent.

(h) Each Lender, each Noteholder and the Collateral Agent agrees to indemnify the Collateral Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, which may be imposed, incurred by or asserted against the Collateral Agent, in any way relating to or arising out of this Agreement, or any action taken or omitted by the Collateral Agent, under or in connection with the foregoing; provided, however, no Lender or Noteholder shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Collateral Agent's gross negligence or willful misconduct. The agreements in this Section shall survive repayment of the Liabilities and the termination of this Agreement.

23. Secured Lender Group Release. Pursuant to a General Security Agreement dated of even date herewith executed by each of the Borrowers, respectively, in favor of the Collateral Agent for the benefit of the Secured Lender Group (collectively, the "Security Agreement"), the Borrowers granted to the Collateral Agent, for the benefit of the Secured Lender Group and the Collateral Agent, a security interest in, among other things, all personal property of the Borrowers, including without limitation, all securities and investment property of the Borrowers. To the extent the security interest granted under the Security Agreement covers one hundred percent (100%) of all issued and outstanding stock of Renown Specialties Company Ltd., all of which stock is owned by the Pledgor, the Collateral Agent and the Secured Lender Group hereby release the security interest in thirty-five percent (35%) of all issued and outstanding stock of Renown Specialties Company Ltd. as evidenced by Stock Certificate No. C-3 for 35 shares.

[The remaining space intentionally left blank]

IN WITNESS WHEREOF, the Pledgor has executed this instrument or has caused this instrument to be duly executed as of \_\_\_\_\_, 2005.

GIBRALTAR STEEL CORPORATION OF NEW YORK

Address for notices:

c/o Gibraltar Industries, Inc.  
3556 Lakeshore Road  
PO Box 2028  
Buffalo, NY 14219-0228  
Telecopier No. (716) 826-1589

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

2002 Noteholder:  
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA  
By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

200 Noteholders:  
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA  
By: \_\_\_\_\_  
Name:  
Title:

PRUCO LIFE INSURANCE COMPANY

by: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

KEYBANK NATIONAL ASSOCIATION,  
as Collateral Agent and Lender

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first above written.

JPMORGAN CHASE BANK, N.A.,

as Lender

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

Name:

Title:

Accepted and agreed to as of the date first above written.

HARRIS TRUST & SAVINGS BANK,  
as a Lender

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

Name:

Title:

Accepted and agreed to as of the date first above written.

HSBC BANK USA, NATIONAL ASSOCIATION,  
as a Lender

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

Name:

Title:

Accepted and agreed to as of the date first above written.

MANUFACTURERS AND TRADERS TRUST COMPANY,  
as a Lender

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

Name:

Title:

Accepted and agreed to as of the date first above written.

US BANK, NATIONAL ASSOCIATION,  
as a Lender

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

Name:

Title:

Accepted and agreed to as of the date first above written.

FLEET NATIONAL BANK, a  
Bank of America Company

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

Name: Scott W. Vokey

Title: Vice President

Accepted and agreed to as of the date first above written.

NATIONAL CITY BANK OF PENNSYLVANIA,  
as a Lender

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

Name:

Title:

Accepted and agreed to as of the date first above written.

COMERCIA BANK,  
as a Lender

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

Name:

Title:

**Schedule A  
To Pledge Security Agreement**

**Subsidiary Guarantors**

Air Vent Inc.	Delaware
Appleton Supply Co., Inc.	Delaware
B&W Heat Treating Corp.	Nova Scotia
B&W Leasing, LLC	Delaware
B & W of Michigan, Inc.	Delaware
Brazing Concepts Company	Michigan
Carolina Commercial Heat Treating, Inc.	Nevada
Cleveland Pickling, Inc.	Delaware
Construction Metals Inc.	California
Gibraltar International, Inc.	Delaware
Gibraltar Strip Steel, Inc.	Delaware
GSCNY Corp.	Delaware
Harbor Metal Treating Co.	Michigan
Harbor Metal Treating of Indiana, Inc.	Michigan
Hi-Temp Heat Treating, Inc.	Delaware
K & W Metal Fabricators, Inc.	Colorado
Pennsylvania Industrial Heat Treaters, Inc.	Pennsylvania
SCM Metal Products, Inc.	Delaware
Solar Group, Inc.	Delaware
Solar of Michigan, Inc.	Delaware
Southeastern Metals Manufacturing Company, Inc.	Florida
United Steel Products Company, Inc.	Minnesota
WM. R. Hubbell Steel Corporation	Illinois

**Exhibit D-1**

**SOLVENCY CERTIFICATE**

The undersigned hereby certifies to KeyBank National Association, as Agent ("Agent") that he is the \_\_\_\_\_ of Gibraltar Industries, Inc., a corporation formed under the laws of Delaware ("Company"), and that I am familiar with its properties, business and assets and am authorized to execute this certificate on behalf of the Company in connection with the Credit Agreement dated as of April 1, 2005 among the Company, KeyBank National Association, as Administrative Agent, Swingline Lender, Letter of Credit Issuer, Lead Arranger and Bookrunner, JPMorgan Chase Bank, N.A. as Syndication Agent and Letter of Credit Issuer, Harris Trust and Savings Bank, as Co-Documentation Agent, HSBC Bank USA, National Association, as Co Documentation Agent, Manufacturers and Traders Trust Company, as Co-Documentation Agent and the Lenders named therein ("Credit Agreement"). I do hereby further certify to the Agent that:

1. As of the date hereof, after taking into account the transactions contemplated by the other Credit Documents, as defined in the Credit Agreement, the fair value of any and all property of each of the Company and the Company and its Subsidiaries (as defined into Credit Agreement) taken as a whole is greater than the total amount of liabilities, including contingent liabilities, of the Company and the Company and its Subsidiaries taken as a whole, respectively.

2. As of the date hereof, after taking into account the transactions contemplated by the Credit Agreement and the other Credit Documents, the present fair salable value of the assets of each of the Company and the Company and its Subsidiaries taken as a whole is not less than the amount that will be required to pay the probable liability of each of the Company and the Company and its Subsidiaries taken as a whole, respectively, on its existing debts as they become absolute and matured.

3. In reaching the conclusions set forth in paragraph 2 and 3 above, we have considered, among other things:

- (a) the cash and other current assets of the Company reflected in the Company's Opening Pro Forma and Projected Balance Sheets reflecting the transactions contemplated by the Credit Agreement, copies of which have been delivered to the Agent ("Balance Sheets");
- (b) the most recent asset appraisal reports, concerning the fair market value of the assets of the Company;
- (c) the experience of management of the Company in operating the Company's business; and
- (d) all contingent liabilities of the Company and its Subsidiaries known to me, including, among other things, claims arising out of, pending, or to our knowledge, threatened litigation against the Company and its Subsidiaries and pension liabilities.

4. As of the date hereof, after taking into account the transactions contemplated by the Credit Documents, each of the Company, and the Company and its Subsidiaries taken as a whole, is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business. In reaching the conclusion set forth in this paragraph, we have considered, among other things:

- (a) the cash and other current assets of the Company reflected in the Balance Sheets;
- (b) the historical and anticipated income stream generated by the Company and its Subsidiaries, as reflected in, among other things, the Cash Flow Projections; and
- (c) the customary terms of trade payables in the business in which the Company is engaged.

5. As of the date hereof, after taking into account the transactions contemplated by the Credit Documents, neither the Company, nor the Company and its Subsidiaries taken as a whole, has an unreasonably small capital or will be left with an unreasonably small capital. In reaching the conclusion set forth in this paragraph, we have considered, among other things, the level of capital customarily maintained by other entities engaged in the business in which the Company is engaged.

6. For purposes of this Certificate, the amount of contingent liabilities at any time shall be computed as the amount that, in light of all of the relevant facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or

matured liability.

IN WITNESS WHEREOF, I have executed this certificate in my capacity as an officer of the Company this 1st day of April, 2005.

	GIBRALTAR INDUSTRIES, INC.
	By: _____
	Name: _____
	Title: _____

Exhibit D-2

BORROWER'S CLOSING CERTIFICATE

GIBRALTAR INDUSTRIES, INC. ("Company") hereby certifies to KeyBank National Association, as Agent ("Agent") for the benefit of the Lenders, in accordance with the provisions of a Credit Agreement among the undersigned, KeyBank National Association, as Administrative Agent, Swingline Lender, Letter of Credit Issuer, Lead Arranger and Bookrunner, JPMorgan Chase Bank, N.A. as Syndication Agent and Letter of Credit Issuer, Harris Trust and Savings Bank, as Co-Documentation Agent, HSBC Bank USA, National Association, as Co Documentation Agent, Manufacturers and Traders Trust Company, as Co-Documentation Agent and the Lenders named therein, dated as of April 1, 2005, as the same from time to time may be amended, supplemented or otherwise modified ("Agreement") that:

- (i) the Company has complied in all material respects with all the terms, covenants and conditions of the Agreement which are binding upon the Company;
- (ii) there exists no Event of Default or Default, as defined in the Agreement;
- (iii) no Material Adverse Effect has occurred and is continuing; and
- (iv) the representations and warranties contained in the Agreement are true in all material respects on the date hereof.

WITNESS the signature of the undersigned duly authorized officer of Company on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

	GIBRALTAR INDUSTRIES, INC.
	By: _____
	Name: _____
	Title: _____

SCHEDULE 1-A

LENDERS

Percentage	Commitment	Name and Notice Address
.15%	\$37,500,000	KEYBANK NATIONAL ASSOCIATION 50 Fountain Plaza, 5th Floor Buffalo, New York 14202 Telephone No. (716) 847-2330 Facsimile No. (716) 847-7897
.12%	\$30,000,000	MANUFACTURERS AND TRADERS TRUST COMPANY One Fountain Plaza, 12th Floor Buffalo, New York 14203 Telephone No. (716) 848-7003 Facsimile No. (716) 848-7318
.11%	\$27,500,000	HARRIS TRUST & SAVINGS BANK 111 W. Monroe - 111/10W Chicago, Illinois 60603 Telephone No. (313) 461-5739 Facsimile No. (313) 461-2891
.11%	\$27,500,000	HSBC BANK USA, NATIONAL ASSOCIATION One HSBC Center, Lobby Level Buffalo, New York 14203 Telephone No. (716) 841-0962 Facsimile No. (716) 855-0384
.11%	\$27,500,000	JPMORGAN CHASE BANK, N.A. 2300 Main Place Tower Buffalo, New York 14202 Telephone No. (716) 858-1418 Facsimile No. (716) 843-4939
.11%	\$27,500,000	US BANK, NATIONAL ASSOCIATION US Bank Centre

		1350 Euclid Avenue, 8th Floor Cleveland, Ohio 44115 Telephone No. (216) 623-9233 Facsimile No. (216) 623-9208
.11%	27,500,000	BANK OF AMERICA 100 Federal Street, MA5-100-09-08 Boston, Massachusetts Telephone No. (617) 434-4067 Facsimile No. (617) 434-3642
.11%	\$27,500,000	NATIONAL CITY BANK OF PENNSYLVANIA 20 Stanwix Street, Locator 25-192 Pittsburgh, Pennsylvania 15222-1323 Telephone No. (412) 644-8007 Facsimile No. (412) 644-6224
.07%	\$17,500,000	COMERICA BANK One Detroit Center 500 Woodward Avenue, 9th Floor, MC 3279 Detroit, Michigan 48275-3279 Telephone No. (313) 222-3647 Facsimile No. (313) 222-3330

**SCHEDULE 1-B**

**ADMINISTRATIVE AGENT ADDRESS**

**KeyBank National Association  
KeyCenter  
127 Public Square  
Cleveland, Ohio 44114  
Attention: Laurie A. Landes  
Telecopier No. (216) 689-0412  
Telephone No. (216) 689-5926  
Email: laurie\_a\_landes@keybank.com**

**SCHEDULE 1-C**

**JPMorgan Chase Letters of Credit**

	L/C Number	Date	Beneficiary	Amount	Expiry Date
1.	R-615893	11/26/04	DM (Asia) Limited	\$ 2,750,000	12/31/05
2.	T-227639	7/11/02	Employers Insurance Company of Wausau, H.O. Financial Credit	\$ 3,370,000	7/15/05
3.	T-245117	1/30/04	Zurich American Insurance Company	\$ 400,000	1/31/06
4.	T-250646	9/14/04	The North River Insurance Company	\$ 1,000,000	9/13/05
5.	506797		Steamship Guaranty	\$ 4,694.40	

**SCHEDULE 6.1**

**PRUDENTIAL AMENDMENT DOCUMENTS**

**Amended and Restated Note Purchase Agreement dated as of April 1, 2005 with respect to the 5.75% Senior Secured Notes due June 17, 2011**

**Amended and Restated Note Purchase Agreement dated as of April 1, 2005 with respect to the 7.35% Senior Secured Notes due July 3, 2007**

**Amended and Restated Subordinated Note Purchase Agreement dated as of April 1, 2005 with respect to the 8.98% Senior Subordinated Notes due January 3, 2008**



## SCHEDULE 7.1

### SUBSIDIARIES

1. The following Subsidiaries are wholly-owned directly by Gibraltar Steel Corporation of New York which, in turn, is wholly-owned by Gibraltar Industries, Inc.:

Air Vent, Inc.  
B&W of Michigan, Inc.  
Brazing Concepts Company  
Carolina Commercial Heat Treating, Inc.  
Construction Metals, Inc.  
GIT Limited\*  
GSCNY Corp.  
GSC Flight Services Corp.\*  
Gibraltar International, Inc.  
Harbor Metal Treating Co.  
Harbor Metal Treating of Indiana, Inc.  
Hi-Temp Heat Treating, Inc.  
K&W Metal Fabricators, Inc.  
Milcor, Inc. \*  
Pennsylvania Industrial Heat Treaters, Inc.  
Renown Specialties Company Ltd.  
SCM Metal Products, Inc.  
Solar of Michigan, Inc.  
Southeastern Metals Manufacturing Company, Inc.  
United Steel Products Company, Inc.  
Wm. R. Hubbell Steel Corporation

2. The following Subsidiaries are directly and wholly-owned by Gibraltar Industries, Inc.

Appleton Supply Co., Inc.  
Cleveland Pickling, Inc.  
Gibraltar Strip Steel, Inc.  
Solar Group, Inc.

3. The remainder of the Subsidiaries are owned as follows:

<u>Subsidiary</u>	<u>Direct Ownership</u>	<u>Indirect Ownership</u>
B&W Heat Treating Corp.	Gibraltar International, Inc. 100%	GSCNY**- 100%
B&W Leasing, LLC	B&W of Michigan, Inc. 100%	GSCNY-100%
Portals Plus, Incorporated*	Milcor, Inc. 100%	GSCNY- 100%

4. Gibraltar Construction Products, Inc.\* is currently inactive and no shares of the company's stock are issued and outstanding.

\* Not a Subsidiary Guarantor

\*\* GSCNY= Gibraltar Steel Corporation of New York

## SCHEDULE 9.3

### EXISTING LIENS

- (a) mortgages on real property owned by the Borrowers and the Subsidiaries securing an amount not to exceed \$10,000,000 in the aggregate;
- (b) *pari-passu* first lien on the Collateral in favor of the holders of (i) the \$25,000,000 Senior Secured Notes due July 3, 2007 issued pursuant to the Note Purchase Agreement dated as of June 28, 2002 and (ii) the \$75,000,000 Senior Secured Notes due June 17, 2011 issued pursuant to the Note Purchase Agreement dated as of June 18, 2004;
- (c) Liens in connection with the guaranty by Gibraltar Industries, Inc. f/k/a Gibraltar Steel Corporation of certain obligations of Brazing Concepts Company not to exceed \$1,900,000.
- (d) Liens referenced in the attached UCC search prepared by the Lender.

## SCHEDULE 9.4

### PERMITTED INDEBTEDNESS

- (a) Indebtedness of Brazing Concepts Company to Bank One Michigan in an amount not exceeding \$1,900,000;
- (b) Leases secured by the UCC Financing Statements referenced on Schedule 9.3.
- (c) Indebtedness of Gibraltar Steel Corporation and Gibraltar Steel Corporation of New York to The Prudential Insurance Company of America as follows: (i) \$25,000,000 under the Senior Secured Notes due June July 3, 2007 issued pursuant to the Note Purchase Agreement dated as of June 28, 2002, (ii) \$75,000,000 under the Senior Secured Notes due June 17, 2011 issued pursuant to the Note Purchase Agreement

dated as of June 18, 2004 (collectively, with the notes described in Subsection 1, the "Senior Secured Notes"), and (iii) \$25,000,000 under Subordinated Notes due January 3, 2008 issued pursuant to the Subordinated Note Purchase Agreement dated as of July 3, 2002.

#### SCHEDULE 9.5

##### INVESTMENTS/GUARANTIES

###### I. Investments

(a). Joint venture resulting from the purchase by GSCNY Corp. of a 50% membership interest in Gibraltar DFC Strip Steel, LLC from the Duferco Farrell Corp. pursuant to that certain Membership Purchase Agreement by and between GSCNY Corp., Duferco Farrell Corp. and Duferco Participations Holding Limited dated December 1, 2003;

(b). Gibraltar Industries, Inc. owns 35 (35 of 100) issued and outstanding shares of common stock of Cleveland Pickling, Inc.

###### II. Guaranties

(a). Guaranty by Gibraltar Industries, Inc. f/k/a Gibraltar Steel Corporation of certain Indebtedness of Brazing Concepts Company not to exceed \$1,900,000.

#### SCHEDULE 9.10

##### TRANSACTIONS WITH AFFILIATES

None

**GIBRALTAR STEEL CORPORATION  
OF NEW YORK**

**\$25,000,000**

**7.35% Senior Secured Notes due July 3, 2007**

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**AMENDED AND RESTATED  
NOTE PURCHASE AGREEMENT**

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**Dated as of April 1, 2005**

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**EXHIBIT 1 -- Form of 7.35% Senior Note due July 3, 2007**

EXHIBIT 3.5(a) -- Form of Opinion of Special Counsel for the Company

EXHIBIT B-1 -- Form of Guaranty Agreement

EXHIBIT B-2 -- Form of Security Agreement

GIBRALTAR STEEL CORPORATION  
OF NEW YORK  
3556 Lakeshore Road  
Buffalo, New York 14219

7.35% Senior Secured Notes due July 3, 2007

As of April 1, 2005

TO EACH OF THE PURCHASERS LISTED IN

THE ATTACHED SCHEDULE A:

Ladies and Gentlemen:

Gibraltar Steel Corporation of New York, a New York corporation (the "*Company*"), and Gibraltar Industries, Inc. f/k/a Gibraltar Steel Corporation, a Delaware corporation ("*Parent*"), and you (sometimes referred to individually as a "*Purchaser*" and collectively as the "*Purchasers*") are parties to a certain Note Purchase Agreement, dated as of July 3, 2002 (as amended and in effect on the date hereof, the "*Original Note Agreement*"), pursuant to which Purchasers have purchased the "*Notes*" (as defined below). The Company, Parent and Purchasers have agreed to amend certain covenants and events of default set forth in the Original Note Agreement. As a convenience to the Company, Parent and Purchasers, the Company, Parent and Purchasers have agreed to effect such amendments by amending and restating the Original Note Agreement in its entirety as hereinafter set forth, upon and subject to the terms and conditions hereof. This amendment and restatement is not intended to be, and shall not be deemed or construed as, a repayment or a novation of the indebtedness outstanding pursuant to the Original Note Agreement. The Company, Parent and Purchasers hereby agree that the Original Note Agreement is hereby amended and restated in its entirety to read as follows:

1. ISSUANCE of Notes.

On July 3, 2002, pursuant to the Original Note Agreement, the Company issued and sold to Purchasers \$25,000,000 in aggregate principal amount of its 7.35% Senior Secured Notes due July 3, 2007, in substantially the form set out in Exhibit 1 (the "*Notes*", such term to include any such notes issued in substitution therefor pursuant to Section 13 of this Agreement).

The \$25,000,000 in aggregate principal amount of Notes issued by the Company to Purchasers pursuant to the Original Note Agreement shall remain outstanding pursuant to this Agreement.

2. Sale and Purchase of Notes.

Subject to the terms and conditions of this Agreement, the Company has issued and sold to you and you have purchased from the Company Notes in the principal amount specified opposite your name in Schedule A at the purchase price of 100% of the principal amount thereof.

3. CONDITIONS TO EFFECTIVENESS OF AGREEMENT.

The effectiveness of this Agreement is subject to the fulfillment to each Purchaser's satisfaction, on or prior to the date of this Agreement, of the following conditions:

3.1 Certain Documents.

Purchasers shall have received the following each dated the date of this Agreement unless otherwise indicated:

- (a) the Guaranty Agreements;
- (b) the Security Agreements; and
- (c) the Intercreditor Agreement.

3.2 Representations and Warranties.

The representations and warranties of Parent, the Company and Subsidiaries in this Agreement or any other Related Document to which it is a party shall be correct on the date of this Agreement.

3.3 Performance; No Default.

Each of Parent, the Company and each Subsidiary Guarantor shall have performed and complied with all agreements and conditions contained in this Agreement or any other Related Document to which it is a party required to be performed or complied with by it prior to or at the date of this Agreement and no Default or Event of Default shall have occurred and be continuing. Neither Parent nor the Company nor any Subsidiary shall have entered into any transaction since December 31, 2003 that would have been prohibited by Sections 10.1, 10.7 or 10.8 hereof had such Sections applied since such date.

3.4 Certificates.

(a) *Officer's Certificate.* Parent and the Company shall have delivered to you an Officer's Certificate, dated as of the date hereof, certifying that the conditions specified in Sections 3.2, 3.3 and 3.8 have been fulfilled.

(b) *Secretary's Certificate.* Each of Parent, the Company and each Subsidiary Guarantor shall have delivered to you a certificate certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of each Related Document to which it is a party including without limitation its constituent documents.

(c) *Good Standing Certificates.* Each of Parent, the Company and each Subsidiary Guarantor shall have delivered good standing certificates for it, issued by the Secretary of State or other appropriate official of its jurisdiction of incorporation and each jurisdiction where the conduct of its business activities or ownership of its property necessitates qualification.

### 3.5 Opinions of Counsel.

You shall have received opinions in form and substance satisfactory to you, dated as of the date hereof (a) from Lippes, Mathias, Wexler & Friedman LLP, counsel for the Company, covering the matters set forth in Exhibit 3.5(a) and covering such other matters incident to the transactions contemplated hereby as you or your counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to you) and (b) from King & Spalding, LLP, your special counsel in connection with such transactions, covering such matters incident to such transactions as you may reasonably request.

### 3.6 Credit Agreement.

Each Purchaser has received a true, correct and complete copy of the Credit Agreement (including all Exhibits and Schedules thereto) and any other document executed in connection therewith and all amendments and waivers relating thereto. As of the date hereof, none of such documents and agreements shall have been amended or supplemented, nor shall have any of the provisions thereof have been waived except pursuant to a written agreement or instrument which has been consented to by each of the Holders in writing. Each of the Credit Agreement and each such other document has been duly executed and delivered by the parties thereto and is in full force and effect.

### 3.7 Payment of Special Counsel Fees.

Without limiting the provisions of Section 15.1, the Company shall have paid on or before the date of this Agreement the reasonable fees, charges and disbursements of your special counsel referred to in Section 3.5 to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to the date of this Agreement.

### 3.8 Changes in Corporate Structure.

Each of Parent and the Company shall not have changed its jurisdiction of incorporation or been a party to any merger or consolidation and shall not have succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

### 3.9 Evidence of Perfection and Priority of Security Interests.

You shall have received copies of all filing receipts or acknowledgments issued by any governmental authority to evidence any filing or recordation necessary to perfect the Security Interests of Collateral Agent on behalf of the Secured Lender Group in the Collateral and evidence in form satisfactory to you that such Liens constitute valid and perfected Security Interests, and that there are no other Liens upon any Collateral except for Permitted Encumbrances.

### 3.10 2004 Note Agreement; 2002 Subordinated Note Agreement.

On or prior to the date hereof, the 2004 Note Agreement and the Subordinated Note Agreement shall have been amended in a manner satisfactory to each Purchaser such that the covenants and events of default set forth therein are consistent with those set forth herein.

### 3.11 Amendment Fee; Proceedings and Documents.

The Company shall have paid to each Purchaser (in accordance with its pro rata share of the Notes) an amendment fee in the amount of \$15,000 in the aggregate as to all Purchasers. All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to you and your special counsel, and you and your special counsel shall have received all such counterpart originals or certified or other copies of such documents as you or they may reasonably request.

## 4. [INTENTIONALLY NOT USED].

## 5. Representations and Warranties.

Each of Parent and the Company represents and warrants to you that:

### 5.1 Organization; Power and Authority.

Each of Parent and the Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of Parent and the Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts, to execute and deliver each Related Document to which it is a party and to perform the provisions thereof.

### 5.2 Authorization, Etc.

Each Related Document has been duly authorized by all necessary corporate action on the part of Parent, the Company and each Subsidiary Guarantor, and each Related Document constitutes a legal, valid and binding obligation of Parent, the Company and each Subsidiary Guarantor, as the case may be, enforceable against it in accordance with its terms.

### 5.3 Disclosure.

Except as disclosed in Schedule 5.3, this Agreement, the documents, certificates or other writings delivered to you by or on behalf of the Company in connection with the transactions contemplated hereby and the financial statements listed in Schedule 5.5, taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as expressly described in Schedule 5.3, or in one of the documents, certificates or

other writings identified therein, or in the financial statements listed in Schedule 5.5, since December 31, 2004, there has been no change in the financial condition, operations, business, properties or prospects of Parent, the Company or any Subsidiary except changes that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect. There is no fact known to Parent or the Company that could reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the other documents, certificates and other writings delivered to you by or on behalf of Parent or the Company specifically for use in connection with the transactions contemplated hereby.

#### 5.4 Organization and Ownership of Shares of Subsidiaries; Affiliates.

(a) Schedule 5.4 contains (except as noted therein) complete and correct lists (i) of Parent's Subsidiaries, showing, as to each Subsidiary, the correct name thereof, the jurisdiction of its organization, and the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by Parent and each other Subsidiary, (ii) of Parent's Affiliates, other than Subsidiaries, and (iii) of Parent's directors and senior officers of Parent and the Company.

(b) All of the outstanding shares of capital stock or similar equity interests of each Subsidiary shown in Schedule 5.4 as being owned by Parent and its Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by Parent or another Subsidiary free and clear of any Lien.

(c) Each Subsidiary identified in Schedule 5.4 is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact, to execute and deliver each Related Document to which it is a party and to perform the provisions thereof.

(d) No Subsidiary is a party to, or otherwise subject to any legal restriction or any agreement (other than this Agreement, the agreements listed on Schedule 5.4 and customary limitations imposed by corporate law statutes) restricting the ability of such Subsidiary to pay dividends out of profits or make any other similar distributions of profits to Parent or any of its Subsidiaries that owns outstanding shares of capital stock or similar equity interests of such Subsidiary.

#### 5.5 Financial Statements.

Parent has delivered to each Purchaser copies of the Consolidated financial statements of Parent and its Subsidiaries listed on Schedule 5.5. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of Parent and its Subsidiaries as of the respective dates specified in such Schedule and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments).

#### 5.6 Compliance with Laws, Other Instruments, Etc.

The execution, delivery and performance by Parent, the Company or any Subsidiary Guarantor of any Related Document to which it is a party will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of Parent, the Company or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other agreement or instrument to which Parent, the Company or any Subsidiary is bound or by which Parent, the Company or any Subsidiary or any of their respective properties may be bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to Parent, the Company or any Subsidiary or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to Parent, the Company or any Subsidiary.

#### 5.7 Governmental Authorizations, Etc.

No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by Parent, the Company or any Subsidiary Guarantor of any Related Document to which it is a party.

#### 5.8 Litigation; Observance of Agreements, Statutes and Orders.

(a) There are no actions, suits or proceedings pending or, to the knowledge of Parent or the Company, threatened against Parent, the Company or any Subsidiary or any property of Parent, the Company or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b) Neither Parent nor the Company nor any Subsidiary is in default under any term of any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Laws) of any Governmental Authority, which default or violation, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

#### 5.9 Taxes.

Parent and its Subsidiaries have filed all tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which is not individually or in the aggregate Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which Parent or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. Neither Parent nor the Company knows of any basis for any tax or assessment that could reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of Parent and its Subsidiaries in respect of Federal, state or other taxes for all fiscal periods are adequate. The Federal income tax liabilities of Parent and its Subsidiaries have been determined by the Internal Revenue Service and paid for all fiscal years up to and including the fiscal year ended December 31, 2000.

#### 5.10 Title to Property; Leases.



Parent and its Subsidiaries have good and sufficient title to their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in [Section 5.5](#) or purported to have been acquired by Parent or any Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the aggregate are Material are valid and subsisting and are in full force and effect in all material respects.

#### 5.11 Licenses, Permits, Etc.

- (a) Parent and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others;
- (b) to the knowledge of Parent and the Company, no product of Parent or any of its Subsidiaries infringes in any material respect any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other Person; and
- (c) to the knowledge of Parent and the Company, there is no Material violation by any Person of any right of Parent or any of its Subsidiaries with respect to any patent, copyright, service mark, trademark, trade name or other right owned or used by the Company or any of its Subsidiaries.

#### 5.12 Compliance with ERISA.

- (a) Parent, the Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect. Neither Parent, the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that could reasonably be expected to result in the incurrence of any such liability by Parent, the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of Parent, the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not be individually or in the aggregate Material.
- (b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. The term "*benefit liabilities*" has the meaning specified in section 4001 of ERISA and the terms "*current value*" and "*present value*" have the meaning specified in section 3 of ERISA.
- (c) Parent, the Company and their ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.
- (d) The expected postretirement benefit obligation (determined as of the last day of Parent's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of Parent and its Subsidiaries is not Material.
- (e) The execution and delivery of any Related Document will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by Parent and the Company in the first sentence of this Section 5.12(e) is made in reliance upon and subject to (i) the accuracy of your representation in Section 6.2 as to the sources of the funds used to pay the purchase price of the Notes to be purchased by you and (ii) the assumption, made solely for the purpose of making such representation, that Department of Labor Interpretive Bulletin 75-2 with respect to prohibited transactions remains valid in the circumstances of the transactions contemplated herein.

#### 5.13 Private Offering by the Company.

Neither Parent, the Company nor anyone acting on its behalf has offered the Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any person other than you and not more than 12 other Institutional Investors, each of which has been offered the Notes at a private sale for investment. Neither Parent nor the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of Section 5 of the Securities Act.

#### 5.14 Use of Proceeds; Margin Regulations.

The Company has applied the proceeds of the sale of the Notes for the repayment of Indebtedness. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute any of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock will constitute any portion of the value of such assets. As used in this Section, the terms "*margin stock*" and "*purpose of buying or carrying*" shall have the meanings assigned to them in said Regulation X.

#### 5.15 Existing Indebtedness; Future Liens.

- (a) Except as described therein, [Schedule 5.15](#) sets forth a complete and correct list of all outstanding Indebtedness of Parent and its Subsidiaries as of December 31, 2004, since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Indebtedness of Parent or its Subsidiaries. Neither Parent nor any Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of Parent or such Subsidiary and no event or condition exists with respect to any Indebtedness of Parent or any Subsidiary that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.
- (b) Except as disclosed in [Schedule 5.15](#), neither Parent nor any Subsidiary of Parent has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien not permitted by Section 10.4.

#### 5.16 Foreign Assets Control Regulations, Etc.

Neither the sale of the Notes by the Company under the Original Note Agreement nor its use of the proceeds thereof has violated the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

#### 5.17 Status under Certain Statutes.

Neither Parent nor the Company nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, as amended, the Public Utility Holding Company Act of 1935, as amended, the Interstate Commerce Act, as amended, or the Federal Power Act, as amended.

#### 5.18 Environmental Matters.

(a) Neither Parent nor the Company nor any Subsidiary has knowledge of any claim or has received any notice of any claim, and no proceeding has been instituted raising any claim against Parent or the Company or any of its Subsidiaries or any of their respective real properties now or formerly owned, leased or operated by any of them or other assets, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.

(b) Neither Parent nor the Company nor any Subsidiary has knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.

(c) Neither Parent nor the Company nor any of its Subsidiaries has (i) stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them or (ii) disposed of any Hazardous Materials in a manner contrary to any Environmental Laws in the case of clause (i) and (ii) in any manner that could reasonably be expected to result in a Material Adverse Effect.

(d) All buildings on all real properties now owned, leased or operated by Parent or any of its Subsidiaries are in compliance with applicable Environmental Laws, except where failure to comply could not reasonably be expected to result in a Material Adverse Effect.

#### 5.19 Fiscal Year.

The fiscal year of Parent and the Company is the calendar year ending December 31.

#### 5.20 Default.

There does not exist any Default or Event of Default.

#### 5.21 Securities.

Each outstanding share of stock, debenture, bond, note and other security of Parent, the Company and each Subsidiary has been validly issued in full compliance with each statute, regulation and other law, and, if a share of stock, is fully paid and nonassessable.

#### 5.22 Inventory Locations.

Neither Parent, the Company nor any Subsidiaries has Inventory at any location in an aggregate in excess of \$1,000,000 value at cost, other than the locations set forth in Schedule 5.22 attached hereto and made a part hereof.

#### 5.23 USA Patriot Act.

Neither Parent nor the Company nor any Subsidiary (i) is listed on the Specially Designated Nationals and Blocked Persons List (the "SDN List") maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC"), or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Order (such other lists are referred to herein, collectively, as the "Other Lists"; the SDN List and the Other Lists are referred to herein, collectively, as the "Lists"), (ii) nor is it a person who has been determined by competent authority to be subject to the prohibitions contained in Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Executive Orders in respect thereof, (iii) as of the date hereof, it is not controlled by, nor does it act for or on behalf of, any person on the Lists or any other person who has been determined by competent authority to be subject to the prohibitions contained in Executive Order No. 13224 (Sept. 23, 2001) or similar prohibitions contained in the rules and regulations of OFAC or any enabling legislation or other Executive Orders in respect thereof, and (v) it is in material compliance with the requirements of Executive Order No. 13224 (Sept. 23, 2001) and other similar requirements contained in the rules and regulations of OFAC and in any enabling legislation or other Executive Orders in respect thereof.

#### 5.24 Solvency.

As of the date hereof and after giving the effect to the transactions contemplated hereunder and under the Credit Agreement on such date, and to any other Indebtedness being incurred on such date in connection therewith (a) the amount of the "present fair salable value" of the assets of the Parent and the Company will, as of such date, exceed the amount of all "liabilities of the Parent and the Company, contingent or otherwise," as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the solvency of debtors, (b) the present fair salable value of the assets of the Parent and the Company will, as of such date, be greater than the amount that will be required to pay the liability of the Parent and the Company on its debts as such debts become absolute and matured, (c) the Parent and the Company will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) the Parent and the Company will be able to pay its debts as they mature. For purposes of this Section 5.24, "debt" means "liability or a claim", and "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

#### 5.25 Company and Subsidiary Guarantors.

The Company and the Subsidiary Guarantors are operated as part of one consolidated business entity and are directly dependent upon each other for and in connection with their respective business activities and their respective financial resources. Parent and the Subsidiary

Guarantors have received a direct economic and financial benefit from the Indebtedness incurred under the Original Note Agreement by the Company, and the incurrence of such Indebtedness was in the best interests of Parent and each of the Subsidiary Guarantors.

## 6. Representations of each Purchaser.

### 6.1 Purchase for Investment.

You represent that you have purchased the Notes for your own account or for one or more separate accounts maintained by you or for the account of one or more pension or trust funds and not with a view to the distribution thereof, *provided* that the disposition of your or their property shall at all times be within your or their control. You understand that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

### 6.2 Source of Funds.

You represent that at least one of the following statements is an accurate representation as to each source of funds (a "Source") used by you to pay the purchase price of the Notes purchased by you under the Original Note Agreement:

- (a) the Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption ("PTE") 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the "NAIC Annual Statement")) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser's state of domicile; or
- (b) the Source is a separate account that is maintained solely in connection with such Purchaser's fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or
- (c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or
- (d) the Source constitutes assets of an "investment fund" (within the meaning of Part V of PTE 84-14 (the "QPAM Exemption")) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part V of the QPAM Exemption), no employee benefit plan's assets that are included in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Section V(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM (applying the definition of "control" in Section V(e) of the QPAM Exemption) owns a 5% or more interest in the Company and (i) the identity of such QPAM and (ii) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Company in writing pursuant to this clause (d); or
- (e) the Source constitutes assets of a "plan(s)" (within the meaning of Section IV of PTE 96-23 (the "INHAM Exemption")) managed by an "in-house asset manager" or "INHAM" (within the meaning of Part IV of the INHAM exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of "control" in Section IV(h) of the INHAM Exemption) owns a 5% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or
- (f) the Source is a governmental plan; or
- (g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or
- (h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 6.2, the terms "employee benefit plan," "governmental plan," and "separate account" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

## 7. Information as to Parent and Company.

### 7.1 Financial and Business Information.

Parent shall deliver to each Holder that is an Institutional Investor:

- (a) **Annual Financial Statements.** As soon as available and in any event within 90 days after the close of each fiscal year of Parent and the Company, the consolidated balance sheets of the Parent and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income, of stockholders' equity and of cash flows for such fiscal year, in each case setting forth comparative figures for the preceding fiscal year, all in reasonable detail and accompanied by the opinion with respect to such consolidated financial statements of independent public accountants of recognized national standing selected by Parent, which opinion shall be unqualified and shall (i) state that such accountants audited such consolidated financial statements in accordance with generally accepted auditing standards, that such accountants believe that such audit provides a reasonable basis for their opinion, and that in their opinion such consolidated financial statements present fairly, in all material respects, the consolidated financial position of Parent and its consolidated Subsidiaries as at the end of such fiscal year and the consolidated results of their operations and cash flows for such fiscal year in conformity with generally accepted accounting principles, or (ii) contain such statements as are customarily included in unqualified reports of independent accountants in conformity with the recommendations and requirements of the American Institute of Certified Public Accountants (or any successor organization).

- (b) **Quarterly Financial Statements.** As soon as available and in any event within 45 days after the close of each of the quarterly accounting periods in each fiscal year of Parent and the Company, the unaudited consolidated balance sheets of the Parent and its consolidated Subsidiaries as at the end of such quarterly period and the related unaudited consolidated statements of income and of cash flows for such quarterly period and/or for the fiscal year to date, and setting forth, in the case of such unaudited consolidated statements of income and of cash flows, comparative figures for the related periods in the prior fiscal year, and which shall be certified by a Senior Financial Officer, subject to changes resulting from normal year-end audit adjustments.
- (c) **Officer's Compliance Certificates.** At the time of the delivery of the financial statements provided for in Sections 7.1(a) and (b), a certificate by a Senior Financial Officer to the effect that no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof and the actions Parent and the Company propose to take with respect thereto, which certificate shall set forth the calculations required to establish compliance with the provisions of Sections 10.7 and 10.13 through 10.16, inclusive, of this Agreement.
- (d) **Notice of Default, Litigation, Material Adverse Effect.** Promptly, and in any event within three Business Days after any of Parent, the Company or any Subsidiary obtains knowledge thereof, notice of
- (i) the occurrence of any event that constitutes a Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Parent and the Company propose to take with respect thereto; or
- (ii) the commencement of, or any other material development concerning, any litigation, governmental or regulatory proceeding pending against the Parent, the Company, or any Subsidiary, or any other event if the same involves any reasonable possibility of having a Material Adverse Effect.
- (e) **ERISA.** Promptly, and in any event within 10 days after Parent, the Company, any Subsidiary or any ERISA Affiliate knows of the occurrence of any of the following, Parent will deliver to each of the Holders a certificate on behalf of Parent by a Responsible Officer of the Parent or the Company setting forth the full details as to such occurrence and the action, if any, that Parent, the Company or such Subsidiary or such ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given to or filed with or by Parent, the Company, the Subsidiary, the ERISA Affiliate, the PBGC, a Plan participant or the Plan administrator with respect thereto (i) that a Reportable Event has occurred with respect to any Plan; (ii) the institution of any steps by any Borrower, any ERISA Affiliate, the PBGC or any other person to terminate any Plan; (iii) the institution of any steps by Parent, the Company or any ERISA Affiliate to withdraw from any Plan; (iv) the institution of any steps by any of the Parent, the Company or any Subsidiary to withdraw from any Multiemployer Plan or Multiple Employer Plan, if such withdrawal could result in withdrawal liability (as described in Part 1 of Subtitle E of Title IV of ERISA) in excess of \$5,000,000; (v) a non-exempt "prohibited transaction" within the meaning of Section 406 of ERISA in connection with any Plan; (vi) that a Plan has an Unfunded Current Liability exceeding \$5,000,000; (vii) any material increase in the contingent liability of Parent, the Company or any Subsidiary with respect to any post-retirement welfare liability; or (viii) the taking of any action by, or the threatening of the taking of any action by, the Internal Revenue Service, the Department of Labor or the PBGC with respect to any of the foregoing.
- (f) **Environmental Matters.** Promptly upon, and in any event within 10 Business Days after, Parent, the Company or any Subsidiary obtains knowledge thereof, notice of one or more of the following environmental matters: (i) any pending or threatened material Environmental Claim against the Parent, the Company or any of their Subsidiaries or any real property owned or operated by the Parent, the Company or any of their Subsidiaries; (ii) any condition or occurrence on or arising from any real property owned or operated by the Parent, the Company or any Subsidiary that (A) results in material noncompliance by Parent, the Company or any Subsidiary with any applicable Environmental Law or (B) would reasonably be expected to form the basis of a material Environmental Claim against Parent, the Company or any Subsidiary or any such real property; (iii) any condition or occurrence on any real property owned, leased or operated by Parent, the Company or any Subsidiary that could reasonably be expected to cause such real property to be subject to any material restrictions on the ownership, occupancy, use or transferability by any the Parent, the Company or any Subsidiary of such real property under any Environmental Law; and (iv) the taking of any material removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any real property owned, leased or operated by Parent, the Company or any Subsidiary as required by any Environmental Law or any governmental or other administrative agency. All such notices shall describe in reasonable detail the nature of the Environmental Claim, Parent's, the Company's or such Subsidiary's response thereto and, to the extent reasonably ascertainable, the potential exposure in dollars of Parent, the Company and their Subsidiaries with respect thereto.
- (g) **SEC Reports and Registration Statements.** Promptly after transmission thereof or other filing with the SEC, copies of all registration statements and all annual, quarterly or current reports that the Parent, the Company or any Subsidiary is required to file with the SEC on Form 10-K, 10-Q or 8-K (or any successor forms).
- (h) **Annual and Quarterly Reports, Proxy Statements and other Reports Delivered to Stockholders Generally.** Promptly after transmission thereof to its stockholders, copies of all annual, quarterly and other reports and all proxy statements that Parent furnishes to its stockholders generally.
- (i) **Auditors' Internal Control Comment Letters, etc.** Promptly upon receipt thereof, a copy of each letter or memorandum commenting on internal accounting controls and/or accounting or financial reporting policies followed by Parent, the Company and/or any Subsidiary that is submitted to Parent or the Company by their independent accountants in connection with any annual or interim audit made by them of the books of Parent or any of its Subsidiaries.
- (j) **Other Information.** Promptly, but in any event within 10 Business Days upon request therefor, such other information or documents (financial or otherwise) relating to the Parent, the Company or any Subsidiary as such Holders may reasonably request from time to time (including information necessary in order to permit compliance with the information requirements of Rule 144A under the Securities Act in connection with a resale of the Notes).

## 7.2 Books and Records Inspection.

Parent and the Company shall, and shall cause each Subsidiary to, keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets of Parent, the Company and such Subsidiaries in accordance with GAAP and shall permit the representatives of each Holder that is an Institutional Investor:

- (a) No Default -- if no Default or Event of Default then exists, at the expense of such Holder and upon reasonable prior notice to Parent and the Company, to visit the principal executive office of Parent and the Company, to discuss the affairs, finances and accounts of Parent, the Company and its Subsidiaries with Parent's and the Company's officers, and (with the consent of Parent and the Company, which consent will not be unreasonably withheld) its independent public accountants, and (with the consent of Parent and the Company, which consent will not be unreasonably withheld) to visit the other offices and properties of Parent, the Company and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) **Default** -- if a Default or Event of Default then exists, at the expense of Parent and the Company to visit and inspect any of the offices or properties of Parent, the Company or any Subsidiary, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision Parent and the Company authorize said accountants to discuss the affairs, finances and accounts of Parent, the Company and its Subsidiaries), all at such times and as often as may be requested.

## 8. Prepayment of the Notes.

### 8.1 Optional Prepayments with Make-Whole Amount.

The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes, in an amount not less than \$5,000,000 *plus* \$100,000 increments in the case of a partial prepayment, at 100% of the principal amount so prepaid, *plus* the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each Holder written notice of each optional prepayment under this Section 8.1 not less than 30 days and not more than 60 days prior to the date fixed for such prepayment. Each such notice shall specify such date, the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such Holder to be prepaid (determined in accordance with Section 8.2), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each Holder a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

### 8.2 Allocation of Partial Prepayments.

In the case of each partial prepayment of the Notes, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

### 8.3 Maturity; Surrender, Etc.

In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

### 8.4 Purchase of Notes.

The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes except upon the payment or prepayment of the Notes in accordance with the terms of this Agreement and the Notes. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of Notes pursuant to any provision of this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

### 8.5 Offer to Prepay Notes in the Event of a Change in Control.

(a) **Notice of Impending Change in Control.** The Company shall give to each Holder prompt written notice of any impending Change in Control for which it has received a written offer or notice.

(b) **Notice of Occurrence of Change in Control.** The Company will promptly after any Responsible Officer has knowledge of the occurrence of any Change in Control, give written notice of such Change in Control to each Holder. Such notice shall contain and constitute an offer to prepay the Notes as described in clause (c) and shall be accompanied by the certificate described in clause (f) hereof.

(c) **Offer to Prepay Notes.** The offer to prepay Notes contemplated by the foregoing clause (b) shall be an offer to prepay, in accordance with and subject to this Section 8.5, all, but not less than all, the Notes held by each Holder (in this case only, "Holder" in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such offer (the "*Proposed Prepayment Date*"). Such Proposed Prepayment Date shall be not less than 30 days and not more than 90 days after the date of such offer (if the Proposed Prepayment Date shall not be specified in such offer, the Proposed Prepayment Date shall be the 60<sup>th</sup> day after the date of such offer).

(d) **Rejection, Acceptance.** A Holder may accept the offer to prepay made pursuant to this Section 8.5 by causing a notice of such acceptance to be delivered to the Company within 60 days after receipt of the notice required pursuant to clause (b). A failure by a Holder to respond to an offer to prepay made pursuant to this Section 8.5 within such 60-day period shall be deemed to constitute an acceptance of such offer by such Holder.

(e) **Prepayment.** Prepayment of the Notes to be prepaid pursuant to this Section 8.5 shall be at 101% of the principal amount of such Notes, together with interest on such Notes accrued to the date of prepayment. The prepayment shall be made on the Proposed Prepayment Date.

(f) **Officer's Certificate.** Each offer to prepay the Notes pursuant to this Section 8.5 shall be accompanied by a certificate, executed by a Responsible Officer of the Company and dated the date of such offer, specifying: (i) the Proposed Prepayment Date; (ii) that such offer is made pursuant to this Section 8.5; (iii) the principal amount of each Note offered to be prepaid; (iv) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (v) that the conditions of this Section 8.5 have been fulfilled; and (vi) in reasonable detail, the nature and date of the Change in Control.

### 8.6 Offer to Prepay Notes in the Event of a Receipt of certain Cash Proceeds of Events of Loss.

(a) **Notice of Receipt of Cash Proceeds.** If during any fiscal year of Parent and the Company, Parent and its Subsidiaries have received cumulative cash proceeds during such fiscal year from one or more Events of Loss of more than 5% of Parent's Consolidated Net Worth and such proceeds are not used by Parent and its Subsidiaries to rebuild, repair or reconstruct the property destroyed or damaged, the Company shall promptly give written notice of such receipt to each Holder. Such notice shall contain and constitute an offer to prepay the Notes as described in clause (b) and shall be accompanied by the certificate described in clause (e) hereof.

(b) *Offer to Prepay Notes.* The offer to prepay Notes contemplated by the foregoing clause (a) shall be an offer to prepay, in accordance with and subject to this Section 8.6, the Notes held by Holders (in this case only, "Holder" in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such offer and in an amount equal to Holders' Share of the Cash Proceeds received by Parent and its Subsidiaries (the "*Proposed Prepayment Date*"). Such Proposed Prepayment Date shall be not less than 30 days and not more than 90 days after the date of such offer (if the Proposed Prepayment Date shall not be specified in such offer, the Proposed Prepayment Date shall be the 60th day after the date of such offer).

(c) *Rejection, Acceptance.* A Holder may accept the offer to prepay made pursuant to this Section 8.6 by causing a notice of such acceptance to be delivered to the Company within 60 days after receipt of the notice required pursuant to clause (a). A failure by a Holder to respond to an offer to prepay made pursuant to this Section 8.6 within such 60-day period shall be deemed to constitute an acceptance of such offer by such Holder.

(d) *Prepayment.* Prepayment of the Notes to be prepaid pursuant to this Section 8.6 shall be accompanied by the Make-Whole Amount determined for the Proposed Prepayment Date with respect to the principal amount to be prepaid. The prepayment shall be made on the Proposed Prepayment Date.

(e) *Officer's Certificate.* Each offer to prepay the Notes pursuant to this Section 8.6 shall be accompanied by a certificate, executed by a Responsible Officer of the Company and dated the date of such offer, specifying: (i) the Proposed Prepayment Date; (ii) that such offer is made pursuant to this Section 8.6; (iii) the principal amount of each Note offered to be prepaid; (iv) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (v) a computation of the Make-Whole Amount due in connection with such prepayment and (vi) that the conditions of this Section 8.6 have been fulfilled.

## 8.7 Make-Whole Amount.

The term "*Make-Whole Amount*" means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal, *provided* that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

*"Called Principal"* means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 8.1 or 8.6 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

*"Discounted Value"* means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (as converted to reflect the periodic basis on which interest on such Note is payable, if payable other than on a semi-annual basis) equal to the Reinvestment Yield with respect to such Called Principal.

*"Reinvestment Yield"* means, with respect to the Called Principal of any Note, 0.50% over the yield to maturity implied by (i) the yields reported, as of 10:00 A.M. (New York City time) on the Business Day next preceding the Settlement Date with respect to such Called Principal for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date on the display designated as "Page PX1" on the Bloomberg Financial Market Service or such other display as may replace Page PX1 on the Bloomberg Financial Market Service (or, if the Bloomberg Financial Market Service shall cease to report such yields or shall cease to be a customary source of information for calculating yield-maintenance amounts on privately placed notes, then such source as is then a customary source for such information), or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. Such implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between yields reported for various maturities. The Reinvestment Yield shall be rounded to that number of decimal places as appears in the interest rate set forth in the applicable Note.

*"Remaining Average Life"* means, with respect to any Called Principal, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

*"Remaining Scheduled Payments"* means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.1 or 12.1.

*"Settlement Date"* means, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 8.1 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

## 9. Affirmative Covenants.

Each of Parent and the Company covenants that so long as any of the Notes are outstanding:

### 9.1 Compliance with Law.

It will and will cause each of its Subsidiaries to comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, Environmental Laws, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### 9.2 Insurance.

(a) It will and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated.

(b) It will and will cause each of its Subsidiaries that is a Subsidiary Guarantor to, at all times keep their respective property that is subject to the Lien of any of the Security Documents insured in favor of the Collateral Agent, and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other insurance maintained by Parent, the Company or any such Subsidiary) (i) shall be endorsed to the Collateral Agent's satisfaction for the benefit of the Collateral Agent (including, without limitation, by naming the Collateral Agent as an additional loss payee (with respect to Collateral) or, to the extent permitted by applicable law, as an additional insured as its interests may appear), (ii) shall state that such insurance policies shall not be canceled, reduced or expired without 30 days' prior written notice thereof (or 10 days' prior written notice in the case of cancellation for the nonpayment of premiums) by the respective insurer to the Collateral Agent, (iii) shall provide that the respective insurers irrevocably waive any and all rights of subrogation with respect to the Secured Lender Group, (iv) shall in the case of any such certificates or endorsements in favor of the Collateral Agent, be delivered to or deposited with the Collateral Agent, and (v) shall provide that the interests of the Collateral Agent shall not be invalidated by an act or negligence of Parent, the Company or any Subsidiary or any person having an interest in any facility owned, leased or used by Parent, the Company or any Subsidiary nor by occupancy or use of any facility owned, leased or used by Parent, the Company or any Subsidiary for purposes more hazardous than permitted by such policy nor by any foreclosure or other proceedings relating to any facility owned, leased or used by Parent, the Company or any Subsidiary. Parent shall deliver to the Collateral Agent contemporaneously with the expiration or replacement of any policy of insurance required to be maintained by this Agreement a certificate as to the new or renewal policy.

### 9.3 Maintenance of Properties.

It will and will cause each of its Subsidiaries to maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, *provided* that this Section shall not prevent Parent, the Company or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and Parent has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### 9.4 Payment of Taxes and Claims.

It will and will cause each of its Subsidiaries to file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien on properties or assets of Parent, the Company or any Subsidiary, *provided* that neither Parent nor the Company nor any Subsidiary need pay any such tax or assessment or claims if (i) the amount, applicability or validity thereof is contested by Parent, the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and Parent, the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of Parent, the Company or such Subsidiary or (ii) the nonpayment of all such taxes and assessments in the aggregate could not reasonably be expected to have a Material Adverse Effect.

### 9.5 Corporate Existence, Etc.

It will at all times preserve and keep in full force and effect its corporate existence. Subject to Section 10.7, Parent and the Company will at all times preserve and keep in full force and effect the corporate existence of each of its Subsidiaries (unless merged into the Company or a Domestic Subsidiary to the extent permitted by Section 10.7) and all rights and franchises of Parent and the Company and its Subsidiaries unless, in the good faith judgment of Parent, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise could not, individually or in the aggregate, have a Material Adverse Effect.

### 9.6 Fair Labor Standards Act.

It will comply with, and cause each Subsidiary to comply with, the provisions of the Fair Labor Standards Act of 1938, as amended.

### 9.7 USA Patriot Act.

It will comply with the requirements of Executive Order No. 13224 (Sept. 23, 2001) and other similar requirements contained in the rules and regulations of OFAC and in any enabling legislation or other Executive Orders in respect thereof.

### 9.8 Covenant to Secure Note Equally.

If it or any Subsidiary shall create or assume any Lien upon any of its property or assets, whether now owned or hereafter acquired, other than Liens permitted by the provisions of Section 10.4 (unless prior written consent to the creation or assumption thereof shall have been obtained pursuant to Section 17.1), it will make or cause to be made effective provision whereby the Notes will be secured by such Lien equally and ratably with any and all other Indebtedness thereby secured so long as any such other Indebtedness shall be so secured.

### 9.9 Guaranteed Obligations.

If, at any time, after the date hereof, it or any of its Subsidiaries incurs or permits to exist any Indebtedness of Parent or the Company or other obligation of Parent or the Company Guaranteed or collateralized in any other manner by any other Person, except to the extent permitted by the provisions of Section 10.3, it will simultaneously cause such Person to execute and deliver to each Holder a guaranty agreement in form and substance reasonably satisfactory to such Holder guaranteeing payment of the principal amount of the Notes and any premium and interest thereon, which bears the same ratio to the total unpaid principal amount of the Notes as the amount of such other obligation which is guaranteed bears to the total unpaid principal amount of such other obligation, or if such other obligation is collateralized, to collateralize the Notes equally and ratably with such other obligation.

### 9.10 Most Favored Covenant Status.

If Parent, the Company or any Subsidiary Guarantor at any time after the date hereof, issues or guarantees any Indebtedness in an aggregate amount exceeding \$5,000,000 (to the extent, if any, that Parent, the Company or such Subsidiary Guarantor is permitted to do so under Section 10.2 or Section 10.3 hereof, as applicable) pursuant to a loan agreement, credit agreement, note purchase agreement, indenture, guaranty or other similar instrument, which agreement, indenture, guaranty or instrument includes affirmative or negative business or financial

covenants (or any events of default or other type of restriction that would have the practical effect of any affirmative or negative business or financial covenant, including, without limitation, any "put" or mandatory prepayment of such indebtedness upon the occurrence of a "change of control") that are applicable to Parent, the Company or any Subsidiary Guarantor, other than those set forth herein, Parent shall promptly so notify Holders. If Required Holders shall so notify Parent in writing (after a determination has been made by Required Holders that any of the above-referenced documents or instruments contain any such provisions, that either individually or in the aggregate, are more favorable to the holders of such unsecured Indebtedness than any corresponding provisions set forth herein), this Agreement shall be deemed to be amended to incorporate some or all of such provisions, in the discretion of the Required Holders into this Agreement, as specified in the notice by Required Holders to Parent, all at the election of the Required Holders. Any such amendments shall be deemed effective as of the date of Parent's receipt of such notice from Required Holders, without requirement of any acknowledgment or acceptance by Parent or the Company; provided, however, that if Required Holders so request Purchaser and the Company shall join with Holders in the execution of such amendment to this Agreement as Required Holders deem appropriate in connection with any such notice.

#### 9.11 Senior Debt.

Parent and the Company will at all times ensure that (i) the claims of the Holders in respect of the Notes and the Guaranties or any of them will not be subordinate to, and will in all respects rank senior to the claims of every unsecured creditor of Parent, the Company or any Subsidiary, and (ii) any Indebtedness of Parent, the Company or any Subsidiary that is subordinated in any manner to the claims of any other creditor of such Person will be subordinated in like manner to such claims of Holders.

#### 9.12 No Integration.

It has taken and will continue to take all necessary steps so that the issuance of the Notes have not and will not require registration under the Securities Act. Each of Parent and the Company covenants that no future offer and sale of debt securities of the Company of any class will be made if, as a result of the doctrine of "integration", there is a reasonable possibility that such offer and sale would result in the loss of the entitlement of the Notes to the exemption from the registration requirements of the Securities Act.

#### 9.13 Certain Subsidiaries to Join in Subsidiary Guaranty.

(a) In the event that any time after the date hereof (x) Parent or the Company creates, holds, acquires or at any time has any Subsidiary (other than the Excluded Subsidiaries and other than a Foreign Subsidiary as to which Section 9.13(b) applies) that is not a party to the Subsidiary Guaranty, or (y) an Event of Default shall have occurred and be continuing and Parent or the Company has any Subsidiary that is not a party to the Subsidiary Guaranty, Parent and the Company will immediately, but in any event within 5 Business Days, notify the Holders in writing of such event, identifying the Subsidiary in question and referring specifically to the rights of Holders under this Section. Parent and the Company will, within 15 days following request therefor from Required Holders, cause such Subsidiary to deliver to Prudential in sufficient quantities for Holders a joinder supplement, reasonably satisfactory in form and substance to the Holders, duly executed by such Subsidiary, pursuant to which such Subsidiary joins in the Subsidiary Guaranty as a guarantor thereunder, and (ii) if such Subsidiary is a corporation, resolutions of the Board of Directors of such Subsidiary, certified by the Secretary or an Assistant Secretary of such Subsidiary as duly adopted and in full force and effect, authorizing the execution and delivery of such joinder supplement, or if such Subsidiary is not a corporation, such other evidence of the authority of such Subsidiary to execute such joinder supplement as Required Holders may reasonably request.

(b) Notwithstanding the foregoing or the provisions of Section 9.14 hereof, neither Parent nor the Company shall, unless an Event of Default shall have occurred and be continuing, be required to pledge (or cause to be pledged) more than 65% of the stock or other equity interests in any first tier Foreign Subsidiary, or any of the Stock or other equity interests in any other Foreign Subsidiary, or to cause a Foreign Subsidiary to join the Subsidiary Guaranty or to become a party to the Security Agreement or any other Security Document, if (i) to do so would subject such Parent or the Company to liability for additional United States income taxes by virtue of Section 956 of the Code in an amount Parent or the Company considers material, and (ii) Parent provides the Holders with documentation, including computations prepared by Parent's internal tax officer, its independent accountants or tax counsel, reasonably acceptable to Required Holders in support thereof.

#### 9.14 Additional Security; Further Assurances.

(a) In the event that at any time after the date hereof,

(i) Parent, the Company or any Subsidiary acquires, or a Person that has become a Subsidiary owns or holds, an interest in assets, stock, securities or any other property or interest, located in the United States or arising out of business conducted in or from the United States, that is not at the time included in the Collateral and is not subject to a Permitted Lien securing Indebtedness, such Parent and the Company will notify Holders in writing of such event, identifying the property or interests in question and referring specifically to the rights of Holders under this Section; or

(ii) an Event of Default shall have occurred and be continuing and Parent, the Company or any Subsidiary at any time owns or holds an interest in any assets, stock, securities or any other property or interest, located within or outside of the United States or arising out of business conducted from any location within or outside the United States, that is not at the time included in the Collateral and is not subject to a Permitted Lien securing Indebtedness;

subject to Section 9.13(b) hereof, Parent or the Company will, or will cause such Subsidiary to, within 30 days, grant the Collateral Agent for the benefit of the Secured Lender Group security interests pursuant to an additional Security Agreement or joinder in any existing Security Agreement in such assets, interests or properties of Parent, the Company or any Subsidiary or any Subsidiary, subject to obtaining any required consents from third parties (including third party lessors and co-venturers) necessary to be obtained for the granting of a Lien on the interests or assets involved with the Parent hereby agreeing to use best efforts to obtain such consents).

(b) Each Security Agreement (i) shall be granted pursuant to documentation reasonably satisfactory in form and substance to Required Holders, and other supporting documentation requested by and reasonably satisfactory in form and substance to Required Holders; and (ii) shall constitute a valid and enforceable perfected Lien upon the interests or properties so included in the Collateral, superior to and prior to the rights of all third persons and subject to no other Liens except Permitted Liens or otherwise agreed by Required Holders at the time of perfection thereof. The Parent and the Company, at their sole cost and expense, will cause each additional Security Agreement or instruments related thereto to be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens created thereby required to be granted pursuant to the additional Security Agreement and will pay or cause to be paid in full all taxes, fees and other charges payable in connection therewith. Furthermore, Parent and the Company shall cause to be delivered to the Collateral Agent such opinions of local counsel, appraisals, title insurance, surveys, environmental assessments, consents of landlords, lien waivers from landlords or mortgagees and other related documents as may be reasonably requested by Required Holders in connection with the execution, delivery and recording of any additional Security Agreement, all of which documents shall be in form and substance reasonably satisfactory to the Collateral Agent.



(c) The Borrowers will, and will cause each of their Subsidiaries to, at the expense of the Borrowers, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such conveyances, financing statements, transfer endorsements, powers of attorney, certificates, and other assurances or instruments and take such further steps relating to the Collateral covered by any of the Security Documents as the Required Holders may reasonably require.

(d) From time to time, each of Parent, the Company and each Subsidiary Guarantor shall promptly take such action and execute and deliver to you such additional documents, instruments, certificates, and agreements as the Required Holders may reasonably request from time to time to effectuate the purposes of the Related Documents, including perfection by Collateral Agent on behalf of the Secured Lender Group of a security interest in any Commercial Tort Claim or Letter of Credit Right and maintenance of the perfected status of the Security Interest at all times.

#### 10. Negative Covenants.

Each of the Parent and the Company covenants that so long as any of the Notes are outstanding:

##### 10.1 Transactions with Affiliates.

Except as set forth on Schedule 10.1, it will not, and will not permit any Subsidiary to, enter into directly or indirectly any transaction or Material group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Company or another Subsidiary), except in the ordinary course and pursuant to the reasonable requirements of Parent's, the Company's or such Subsidiary's business and upon fair and reasonable terms no less favorable to Parent, the Company or such Subsidiary than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate, except agreements and transactions with and payments to officers, directors and shareholders that are (i) approved by the directors or shareholders of Parent, the Company or a Subsidiary, as applicable, (ii) entered into in the ordinary course of business and (iii) not prohibited by any of the provisions of this Agreement. Nothing in this Section 10.1 shall be construed to prohibit any action otherwise permitted by Section 10.10.

##### 10.2 Borrowed Money.

It will not, and will not permit any Subsidiary to, create, incur or suffer to exist or assume any Indebtedness for money borrowed, directly or indirectly, other than

- (a) Subordinated Debt;
- (b) existing Indebtedness and accommodations for Indebtedness as set forth on Schedule 10.2 hereto;
- (c) Indebtedness under this Agreement, the 2004 Note Agreement and the Subordinated Note Agreement;
- (d) Indebtedness in connection with the Credit Agreement;
- (e) Capital Lease Obligations and other Indebtedness secured by Liens permitted pursuant to clause (vi) of Section 10.4;
- (f) Indebtedness of the Parent, the Company and their Subsidiaries under Hedge Agreements;
- (g) any Guaranties permitted by Section 10.3; and
- (h) other unsecured Indebtedness of the Company to the extent not permitted by any of the foregoing clauses provided that at the time of any incurrence thereof after the date hereof, and after giving effect thereto, Parent and the Company would be in compliance with the financial covenants set forth in Sections 10.13 through 10.16 and no Default or Event of Default shall have occurred and be continuing or would result therefrom.

##### 10.3 Guarantees.

It will not, and will not permit any Subsidiary to, Guarantee, endorse or otherwise be or become liable or contingently liable in connection with the obligations or Indebtedness of any other Person, including any Subsidiary, directly or indirectly, except (i) as an endorser of instruments for the payment of money deposited to its bank account for collection in the ordinary course of business; (ii) Parent and each Subsidiary may Guarantee the obligations of the Company under the Notes and this Agreement and under the 2004 Note Agreement and the notes issued pursuant thereto, and (iii) without duplication, Parent and each Subsidiary may provide unsecured guaranties of any Indebtedness of the Company permitted to be incurred pursuant to Section 10.2.

##### 10.4 Liens.

It will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any Lien upon any of its property, assets, income or profits, whether now owned or hereafter acquired, or pledge or encumber any assets, except (i) Liens in favor of the Collateral Agent for the benefit of the Secured Lender Group; (ii) Liens set forth on Schedule 10.4; (iii) Standard Permitted Liens, and (iv) Capital Leases, Synthetic Leases and Liens that are placed upon fixed or capital assets, acquired, constructed or improved by the Parent, the Company or any Subsidiary, provided that (1) the maximum principal amount of Indebtedness secured thereby does not exceed \$25,000,000 in the aggregate at any one time (using Capitalized Lease Obligations in lieu of principal amount, in the case of any Capital Leases and using the present value, based on the implicit interest rate, in lieu of principal amount, in the case of any Synthetic Lease), (2) such Liens and the Indebtedness secured thereby are incurred prior to or within 120 days after such acquisition or the completion of such construction or improvement, (3) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets; and (4) such Liens shall not apply to any other property or assets of the Parent, the Company or any Subsidiary. Neither Parent nor the Company has entered, and so long as this Agreement is in effect it will not enter, into any covenant or agreement with any other Person that prohibits the granting or existence of a Lien in the personal or real property of Parent or the Company or any Subsidiary in favor of the Collateral Agent, as collateral agent and for the benefit of the Secured Lender Group.

##### 10.5 Plan Terminations; Minimum Funding, Etc.

Parent and the Company will not, and will not permit any ERISA Affiliate to, terminate any Plan or Plans so as to result in liability of Parent or the Company or any ERISA Affiliate to the PBGC in excess of, in the aggregate, the amount that is equal to the greater of (x) \$5,000,000, or (y) 5% of the Borrowers' Consolidated Net Worth as of the date of the then most recent financial statements furnished to Holders pursuant to the provisions of this Agreement, (ii) permit to exist one or more events or conditions that reasonably present a material risk of the termination by

the PBGC of any Plan or Plans with respect to which Parent or the Company or any ERISA Affiliate would, in the event of such termination, incur liability to the PBGC in excess of such amount in the aggregate, or (iii) fail to comply with the minimum funding standards of ERISA and the Code with respect to any Plan.

#### 10.6 Compliance with Law.

It will not violate any law or regulation, order, writ, injunction or decree of any court or governmental instrumentality or breach any agreement to which Parent, Company or any Subsidiary is subject or in default thereunder, which violation or breach would have a Material Adverse Effect.

#### 10.7 Consolidations, Mergers, Acquisitions and Asset Sales, Etc.

Neither Parent nor the Company will, nor will permit any Subsidiary to, (1) wind up, liquidate or dissolve its affairs, (2) enter into any transaction of merger or consolidation, (3) make or otherwise effect any Acquisition, (4) sell or otherwise dispose of any of its property or assets outside the ordinary course of business, or otherwise make or otherwise effect any Asset Sale, or (5) agree to do any of the foregoing at any future time, except that the following shall be permitted:

- (a) **Certain Intercompany Mergers, etc.** If no Default or Event of Default shall have occurred and be continuing or would result therefrom, each of the following shall be permitted: (i) the merger, consolidation or amalgamation of any Domestic Subsidiary of the Company with or into the Company, provided the Company is the surviving or continuing or resulting corporation; (ii) the merger, consolidation or amalgamation of any Domestic Subsidiary of the Company with or into any Subsidiary Guarantor, provided that the surviving or continuing or resulting corporation is a Subsidiary Guarantor; and (iii) the transfer or other disposition of any property by any Subsidiary Guarantor to the Company or any other Subsidiary Guarantor;
- (b) **Acquisitions.** Parent, the Company or any Subsidiary Guarantor may make any Acquisition that is a Permitted Acquisition, provided that all of the conditions contained in the definition of the term Permitted Acquisition are satisfied;
- (c) **Permitted Dispositions.** If no Default or Event of Default shall have occurred and be continuing or would result therefrom, and no Material Adverse Effect has occurred or will result therefrom, Parent, the Company or any Subsidiary may consummate any Asset Sale, provided that (i) the consideration for such transaction represents fair value (as determined by any Responsible Officer of Parent); (ii) the cumulative aggregate value of the assets sold or transferred does not exceed 5% of the Parent's Consolidated Net Worth for all such transactions completed during any fiscal year, and (iii) in the case of any such transaction involving a sale of assets having a value in excess of \$10,000,000, at least five Business Days prior to the date of completion of such transaction Parent shall have delivered to each Holder an officer's certificate executed on behalf of Parent by a Responsible Officer of Parent, which certificate shall contain (x) a description of the proposed transaction, and (y) a certification that no Default, Event of Default or Material Adverse Effect has occurred and is continuing, or would result from consummation of such transaction;
- (d) **Leases.** Parent, the Company or any Subsidiary may enter into Operating Leases of property or assets not constituting Acquisitions in the ordinary course of business, provided such leases are not otherwise in violation of this Agreement; and, provided that the total net consolidated rental payments and expenses under all such Operating Leases do not exceed \$30,000,000 in any of the Parent's fiscal years;
- (e) **Capital Expenditures.** Parent, the Company and any Subsidiary shall be permitted to make any Consolidated Capital Expenditures, so long as no Default or Event of Default has occurred and is continuing or will occur as a result of such Consolidated Capital Expenditure; and
- (f) **Permitted Investments.** Parent, the Company and the Subsidiaries shall be permitted to make and dispose of the Investments permitted pursuant to Section 10.8.

#### 10.8 Investments.

Parent and the Company will not, and will not permit any Subsidiary to, directly or indirectly make or commit to make any Investment, except:

- (a) Parent, the Company or any of its Subsidiary may invest in cash and Cash Equivalents;
- (b) any endorsement of a check or other medium of payment for deposit or collection, or any similar transaction in the normal course of business;
- (c) Parent, the Company and any Subsidiary may acquire and hold receivables owing to them in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;
- (d) Investments required by Parent, the Company or any Subsidiary (i) in exchange for any other investment held by Parent, the Company or any such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other investment, or (ii) as a result of a foreclosure by Parent, the Company or any Subsidiary with respect to any secured investment or other transfer of title with respect to any secured investment in default;
- (e) loans and advances to employees for business-related travel expenses, moving expenses, costs of replacement homes, business machines or supplies, automobiles and other similar expenses, in each case incurred in the ordinary course of business;
- (f) to the extent not permitted by the foregoing clauses, Investments existing as of the date hereof and described on Schedule 10.8 hereto;
- (g) investments of Parent, the Company and any Subsidiary in Hedge Agreements;
- (h) existing investments in any Subsidiaries and any additional Investments in any Subsidiary Guarantor;
- (i) intercompany loans and advances made by the Parent or the Company from time to time to each other or to any Subsidiary for working capital purposes in the ordinary course of business and for other purposes permitted under other provisions of this Agreement which would not be in violation of any of the terms or provision of this Agreement;
- (j) the Acquisitions permitted by Section 10.7;
- (k) Investments in joint ventures in an aggregate amount not to exceed \$15,000,000 in any of Parent's fiscal years; and

(l) notes held by a Borrower or a Subsidiary evidencing a portion of the purchase price of an asset disposed of pursuant to Section 10.7.

#### 10.9 Subsidiaries.

It will not acquire, organize or cause to exist any Subsidiaries except if Parent, the Company and such Subsidiary have complied with the requirements of Section 9.13.

#### 10.10 Dividends.

In the case of Parent, upon the occurrence of and during the existence of a Default or an Event of Default, it will not declare or pay dividends or make any capital distributions.

#### 10.11 Stock.

In the case of Parent, it will not sell, convey, transfer, assign, pledge or otherwise encumber any of the stock of the Company or any other Subsidiary to any Person.

#### 10.12 Intentionally Not Used.

#### 10.13 Interest Coverage Ratio.

Parent and the Company will not at any time permit the Interest Coverage Ratio to be less than 3.00 to 1.00.

#### 10.14 Consolidated Net Worth.

Parent and the Company will not permit the Consolidated Net Worth as at the end of any fiscal quarter of Parent and the Company to be less than \$200,000,000 *plus*, commencing March 31, 2005 and as of the end of each fiscal quarter thereafter, 40% of cumulative Consolidated Net Income (determined as set forth below in this Section 10.14). For purposes hereof, cumulative Consolidated Net Income shall be determined as of the last day of each fiscal quarter of Parent and the Company and shall be determined based on Consolidated Net Income as of the last day of each fiscal quarter of Parent and the Company, from December 31, 2004 through the end of the fiscal quarter for which the calculation of cumulative Consolidated Net Income is being made. For purposes of this Section, in no event shall cumulative Consolidated Net Income be less than zero.

#### 10.15 Senior Funded Debt/EBITDA.

Parent and the Company will not at any time permit Senior Funded Debt to EBITDA Ratio to exceed 3.25 to 1.00.

#### 10.16 Total Funded Debt/EBITDA.

Parent and the Company will not at any time permit the Total Funded Debt to EBITDA Ratio to exceed 3.75 to 1.00.

#### 10.17 Optional Payments of Subordinated Debt.

Parent and the Company will not, and will not permit any Subsidiary to, make any optional payment of principal of or interest on any Subordinated Debt.

#### 10.18 Prepayments and Refinancings of Other Debt, Etc.

Parent and the Company will not, and will not permit any Subsidiary to, make (or give any notice in respect thereof) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including, without limitation, by way of depositing with the trustee with respect thereto money or securities before due for the purpose of paying when due) or exchange of, or refinance or refund, any Indebtedness of the Parent, the Company or any Subsidiary that has an outstanding principal balance (or Capitalized Lease Obligation, in the case of a Capital Lease, or present value, based on the implicit interest rate, in the case of a Synthetic Lease), greater than \$5,000,000 (other than the Indebtedness outstanding under the Credit Agreement, the Notes, the "Notes" (as defined in the 2004 Note Agreement) and intercompany loans and advances among a the Parent or the Company and its Subsidiaries); provided that the Parent, the Company or any Subsidiary may refinance or refund any such Indebtedness if the aggregate principal amount thereof (or Capitalized Lease Obligation, in the case of a Capital Lease, or present value, based on the implicit interest rate, in the case of a Synthetic Lease) is not increased.

#### 10.19 Environmental Compliance.

It will not cause or permit any change to be made in the present or intended use of any property owned, leased or operated by Parent, the Company or any Subsidiary which would (i) involve the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Material or the use of any such property as a landfill or other waste disposal site or for the storage of petroleum or petroleum based products (except in compliance with applicable Environmental Laws), (ii) violate any applicable Environmental Laws, or (iii) constitute non-compliance with any Environmental Permit.

#### 10.20 Limitation on Certain Restrictive Agreements.

Parent and the Company will not, and will not permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist or become effective, any "negative pledge" covenant or other agreement restriction or arrangement that prohibits, restricts or imposes any condition upon (a) the ability of Parent, the Company or any Subsidiary to create, incur or suffer to exist any Lien upon any of its property or assets as security for Indebtedness, or (b) the ability of any such Subsidiary to pay dividends or any other interest or participation in its profits owned by a Parent, the Company or any Subsidiary or pay any Indebtedness owed to Parent, the Company or a Subsidiary, or to make loans or advances to Parent, the Company or Subsidiary, or transfer any of its property or assets to Parent, the Company or any Subsidiary, except for such restrictions existing under or by reason of (i) applicable law, (ii) this Agreement and the Related Documents, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest, (iv) customary provisions restricting assignment of any licensing agreement entered into in the ordinary course of business, (v) customary provisions restricting the transfer or further encumbering of assets subject to Liens permitted under clause (ii) or (iv) of Section 10.4, (vi) restrictions contained in the agreements relating to the Indebtedness set forth on Schedule 10.2 hereto as in effect on the date hereof (and any similar restrictions contained in any agreement governing any refinancing or refunding thereof not prohibited by this Agreement), (vii) customary restrictions affecting only a Subsidiary under any agreement or instrument governing any of the Indebtedness of a Subsidiary permitted pursuant to Section 10.2, (viii) restrictions affecting any Foreign Subsidiary under any agreement or instrument governing any Indebtedness of such Foreign Subsidiary permitted pursuant to Section 10.2, and customary restrictions

contained in "comfort" letters and guarantees of any such Indebtedness, (ix) any document relating to Indebtedness secured by a Lien permitted by Section 10.4, insofar as the provisions thereof limit grants of junior liens on the assets securing such Indebtedness, and (x) any Operating Lease or Capital Lease, insofar as the provisions thereof limit grants of a security interest in, or other assignments of, the related leasehold interest to any other Person.

#### 10.21 Changes in Business; Change in Fiscal Year.

Neither Parent, Company nor any Subsidiary will engage in any business if, as a result, the general nature of the business, taken on a consolidated basis, which would then be engaged in by Parent and Subsidiaries, would be substantially changed from the general nature of the business engaged in by Parent and its Subsidiaries on the date hereof. Neither Parent nor the Company will change its Fiscal Year.

#### 11. Events of Default.

An "Event of Default" shall exist if any of the following conditions or events shall occur and be continuing:

- (a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise or defaults in the payment of any fees or (except as provided in clause (b) below) other amounts payable hereunder or under any other Related Document when the same becomes due and payable; or
- (b) the Company defaults in the payment of any interest on any Note for more than two Business Days after the same becomes due and payable; or
- (c) Parent or the Company defaults in the performance of or compliance with any term contained in Section 10; or
- (d) Parent or the Company defaults in the performance of or compliance with any term contained herein (other than those referred to in paragraphs (a), (b) and (c) of this Section 11) and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Company receiving written notice of such default from any Holder (any such written notice to be identified as a "notice of default" and to refer specifically to this paragraph (d) of Section 11); or
- (e) any representation or warranty made in writing by or on behalf of Parent, the Company or by any officer of Parent or the Company in this Agreement or in any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made; or
- (f) (i) Parent, the Company or any Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least \$10,000,000 beyond any period of grace provided with respect thereto, or (ii) Parent, the Company or any Subsidiary is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least \$10,000,000 or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Indebtedness has become, or has been declared (or one or more Persons are entitled to declare such Indebtedness to be), due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Indebtedness to convert such Indebtedness into equity interests), (x) Parent, the Company or any Subsidiary has become obligated to purchase or repay Indebtedness before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least \$10,000,000, or (y) one or more Persons have the right to require Parent, the Company or any Subsidiary so to purchase or repay such Indebtedness; or
- (g) any of Parent, the Company or any Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or
- (h) a court or governmental authority of competent jurisdiction enters an order appointing, without consent by Parent, the Company or any of its Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of Parent, the Company or any of its Subsidiaries, or any such petition shall be filed against Parent, the Company or any of its Subsidiaries and such petition shall not be dismissed within 90 days; or
- (i) a final judgment or judgments for the payment of money aggregating in excess of \$10,000,000 are rendered against one or more of Parent, the Company and its Subsidiaries (other than any judgment for which it is fully insured as acknowledged by the insurance carrier) and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or
- (j) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified Parent or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate "amount of unfunded benefit liabilities" (within the meaning of section 4001(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, shall exceed \$250,000, (iv) Parent or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) Parent or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) Parent or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of Parent or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect.

As used in Section 11(i), the terms "employee benefit plan" and "employee welfare benefit plan" shall have the respective meanings assigned to such terms in section 3 of ERISA.

(k) any of Parent, the Company or any Subsidiary Guarantor shall fail to comply with the terms of any Related Document to which it is a party beyond applicable grace periods, if any, specified in such Related Document; or

(l) any of Parent or the Company or any Subsidiary Guarantor or any other Person shall disavow or attempt to terminate any or all of the Guaranty Agreements or any or all of the Guaranty Agreements shall cease to be in full force and effect in whole or in part for any reason whatsoever or any of Parent or the Company or any Subsidiary Guarantor shall so assert in writing; or

(m) all or any portion of the Security Interest granted to the Collateral Agent on behalf of the Secured Lender Group pursuant to each Security Agreement shall fail at any time to constitute a first priority security interest in or assignment of the collateral described in such Security Agreements subject only to Liens permitted thereunder or the Security Agreements shall cease to be in full force and effect in whole or in part for any reason whatsoever or any of Parent or the Company or any Subsidiary Guarantor shall so assert in writing.

## 12. Remedies on Default, Etc.

### 12.1 Acceleration.

(a) If an Event of Default with respect to the Company described in paragraph (g) or (h) of Section 11 has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, any Holder or Holders of more than 25% in principal amount of the Notes at the time outstanding may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in paragraph (a) of Section 11 has occurred and is continuing, any Holder or Holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable under this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, *plus* (x) all accrued and unpaid interest thereon, (y) the Make-Whole Amount determined in respect of such principal amount and (z) all other fees and amounts payable hereunder or under any of the Related Documents shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each Holder has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

### 12.2 Other Remedies.

If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the Holder at the time outstanding may proceed to protect and enforce the rights of such Holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

### 12.3 Rescission.

At any time after any Notes have been declared due and payable pursuant to clause (b) or (c) of Section 12.1, the Holders of not less than 51% in principal amount of the Notes then outstanding, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes and all fees and other amounts that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, fees and other amounts and (to the extent permitted by applicable law) any overdue interest in respect of the Notes, at the Default Rate, (b) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 17, and (c) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

### 12.4 No Waivers or Election of Remedies, Expenses, Etc.

No course of dealing and no delay on the part of any Holder in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such Holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or by any Note upon any Holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the Holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such Holder incurred in any enforcement or collection under this Section 12, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

## 13. Registration; Exchange; Substitution of Notes.

### 13.1 Registration of Notes.

The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each Holder, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and Holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any Holder that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered Holders.

### 13.2 Transfer and Exchange of Notes.

Upon surrender of any Note at the principal executive office of the Company for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Note or his attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part

thereof), the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the Holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such Holder may request and shall be substantially in the form of Exhibit 1. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$100,000, *provided* that if necessary to enable the registration of transfer by a Holder of its entire holding of Notes, one Note may be in a denomination of less than \$100,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 6.2.

### 13.3 Replacement of Notes.

Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (*provided* that if the Holder is, or is a nominee for, an original Purchaser or another Holder with a minimum net worth of at least \$50,000,000, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Company at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

### 14. Payments on Notes.

#### 14.1 Place of Payment.

Subject to Section 14.2, payments of principal, Make-Whole Amount, if any, interest becoming due and payable on the Notes and all fees and other amounts payable hereunder or under any of the other Related Documents shall be made in New York, New York at the principal office of Bank of New York in such jurisdiction. The Company may at any time, by notice to each Holder, change the place of payment of the Notes and such other amounts so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

#### 14.2 Home Office Payment.

So long as you or your nominee shall be the Holder, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, interest and all fees and other amounts payable hereunder or under any of the other Related Documents by the method and at the address specified for such purpose below your name in Schedule A, or by such other method or at such other address as you shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, you shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.1. Prior to any sale or other disposition of any Note held by you or your nominee you will, at your election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 14.2 to any Institutional Investor that is the direct or indirect transferee of any Note purchased by you under this Agreement and that has made the same agreement relating to such Note as you have made in this Section 14.2.

### 15. Expenses, Etc.

#### 15.1 Transaction Expenses.

Whether or not the transactions contemplated hereby are consummated, the Company will pay all costs and expenses (including reasonable attorneys' fees of a special counsel and, if reasonably required, local or other counsel) incurred by you or another Holder in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement or the Notes or any other Related Document (whether or not such amendment, waiver or consent becomes effective), including, without limitation: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement or the Notes or any other Related Document or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or the Notes or any other Related Document, or by reason of being a Holder; and (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of Parent, the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes and the Related Documents. The Company will pay, and will save you and each other Holder harmless from, all claims in respect of any fees, costs or expenses if any, of brokers and finders.

#### 15.2 Survival.

The obligations of the Company under this Section 15 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or the Notes, and the termination of this Agreement.

### 16. Survival of Representations and Warranties; Entire Agreement.

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by you of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of you or any other Holder. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement and the Notes embody the entire agreement and understanding between you and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

### 17. Amendment and Waiver.

### 17.1 Requirements.

This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Section 1, 2, 3, 5, 6 or 21 hereof, or any defined term (as it is used therein), will be effective as to you unless consented to by you in writing, and (b) no such amendment or waiver may, without the written consent of the Holder at the time outstanding affected thereby, (i) subject to the provisions of Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest or of the Make-Whole Amount on, the Notes, (ii) change the percentage of the principal amount of the Notes the Holders of which are required to consent to any such amendment or waiver, or (iii) amend any of Sections 8, 11(a), 11(b), 12, 17 or 20.

### 17.2 Solicitation of Holders.

(a) *Solicitation.* The Company will provide each Holder (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such Holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 17 to each Holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite Holders.

(b) *Payment.* The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any Holder as consideration for or as an inducement to the entering into by any Holder or any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each Holder then outstanding even if such Holder did not consent to such waiver or amendment.

### 17.3 Binding Effect, Etc.

Any amendment or waiver consented to as provided in this Section 17 applies equally to all Holders and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and the Holder nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any Holder. As used herein, the term "*this Agreement*" and references thereto shall mean this Agreement as it may from time to time be amended or supplemented. From and after the date of satisfaction of the conditions precedent set forth in Section 3, all references in the Original Note Agreement or this Agreement or in any of the Related Documents (whether delivered pursuant to this Agreement or pursuant to the Original Note Agreement) to "*this Agreement*" or the "*Note Purchase Agreement*" and the words "*herein*", "*hereof*" and words of like import referring to the Original Note Agreement or this Agreement shall mean and be references to the Original Note Agreement as amended and restated in its entirety by this Agreement. This Agreement amends and restates the Original Note Agreement in its entirety and it is the intent of the parties hereto that nothing contained herein shall constitute a novation or an accord and satisfaction.

### 17.4 Notes held by Company, Etc.

Solely for the purpose of determining whether the Holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or the Notes, or have directed the taking of any action provided herein or in the Notes to be taken upon the direction of the Holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

### 18. Notices.

All notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

- (i) if to you or your nominee, to you or it at the address specified for such communications in Schedule A, or at such other address as you or it shall have specified to the Company in writing,
- (ii) if to any other Holder of any Note, to such Holder at such address as such other Holder shall have specified to the Company in writing, or
- (iii) if to the Company, to the Company at its address set forth at the beginning hereof to the attention of John E. Flint, or at such other address as the Company shall have specified to each Holder in writing.

Notices under this Section 18 will be deemed given only when actually received.

### 19. Reproduction of Documents.

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by you at the Closing (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to you, may be reproduced by you by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and you may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by you in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit the Company or any other Holder from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

### 20. Confidential Information.

For the purposes of this Section 20, "*Confidential Information*" means information delivered to you by or on behalf of Parent, the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and

that was clearly marked or labeled or otherwise adequately identified when received by you as being confidential information of Parent, the Company or such Subsidiary, *provided* that such term does not include information that (a) was publicly known or otherwise known to you prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by you or any person acting on your behalf, (c) otherwise becomes known to you other than through disclosure by Parent, the Company or any Subsidiary or (d) constitutes financial statements delivered to you under Section 7.1 that are otherwise publicly available. You will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by you in good faith to protect confidential information of third parties delivered to you, *provided* that you may deliver or disclose Confidential Information to (i) your directors, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by your Notes), (ii) your financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 20, (iii) any other Holder, (iv) any Institutional Investor to which you sell or offer to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (v) any Person from which you offer to purchase any security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (vi) any federal or state regulatory authority having jurisdiction over you, (vii) the National Association of Insurance Commissioners or any similar organization, or any nationally recognized rating agency that requires access to information about your investment portfolio or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to you, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which you are a party or (z) if an Event of Default has occurred and is continuing, to the extent you may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under your Notes and this Agreement. In the event Prudential or any of the Prudential Affiliates are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands or similar process), in connection with any proceeding, to disclose any Confidential Information, they will, unless prohibited by law, rule or regulation, provide Parent with notice of any such request or requirement so that Parent may seek a protective order or other appropriate remedy. In the event such protective order or other remedy is not obtained and upon written request from Parent, Prudential or such Prudential Affiliate will use reasonable efforts to obtain assurances that confidential treatment will be accorded to such information; provided, however, that all legal fees and costs and any other expense incurred in connection with such efforts shall be paid by Parent. Each Holder, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20 as though it were a party to this Agreement. On reasonable request by Parent or the Company in connection with the delivery to any Holder of information required to be delivered to such Holder under this Agreement or requested by such Holder (other than a holder that is a party to this Agreement or its nominee), such Holder will enter into an agreement with Parent or the Company, as the case may be, embodying the provisions of this Section 20.

#### 21. Substitution of Purchaser.

You shall have the right to substitute any Prudential Affiliate as the purchaser of the Notes that you have agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both you and such Prudential Affiliate, shall contain such Prudential Affiliate's agreement to be bound by this Agreement and shall contain a confirmation by such Prudential Affiliate of the accuracy with respect to it of the representations set forth in Section 6. Upon receipt of such notice, wherever the word "you" is used in this Agreement (other than in this Section 21), such word shall be deemed to refer to such Prudential Affiliate in lieu of you. In the event that such Prudential Affiliate is so substituted as a purchaser hereunder and such Prudential Affiliate thereafter transfers to you all of the Notes then held by such Prudential Affiliate, upon receipt by the Company of notice of such transfer, wherever the word "you" is used in this Agreement (other than in this Section 21), such word shall no longer be deemed to refer to such Prudential Affiliate, but shall refer to you, and you shall have all the rights of an original holder of the Notes under this Agreement.

#### 22. Miscellaneous.

##### 22.1 Successors and Assigns.

All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder of a Note) whether so expressed or not.

##### 22.2 Payments Due on Non-Business Days.

Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal of or Make-Whole Amount, interest on any Note or any fee or other amount payable hereunder or under any of the Related Documents that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day.

##### 22.3 Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

##### 22.4 Construction.

Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

##### 22.5 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

##### 22.6 Governing Law/Submission to Jurisdiction/Waiver of Jury.

(a) This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.



(b) EACH HOLDER AND EACH OF PARENT AND THE COMPANY HEREBY SUBMITS TO THE JURISDICTION OF THE COURTS (FEDERAL AND STATE) OF THE STATE OF NEW YORK, AND IRREVOCABLY AGREES THAT, SUBJECT TO THE SOLE AND ABSOLUTE ELECTION OF THE REQUIRED HOLDERS, ALL ACTIONS OR PROCEEDINGS RELATING TO THIS AGREEMENT OR THE NOTES OR ANY OTHER RELATED DOCUMENT SHALL BE LITIGATED IN SUCH COURTS, AND SUCH HOLDER, PARENT AND THE COMPANY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING IN ANY SUCH COURT.

(c) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FORGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS ELECTION.

22.7 Capitalized Terms/Interpretation.

(a) Certain capitalized terms used in this Agreement are defined in Schedule B.

(b) References to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement.

(c) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP consistent with those applied in the preparation of the audited Consolidated financial statements of Parent and its Subsidiaries referred to in this Agreement. Capitalized words not otherwise defined in this Agreement shall have the meanings set forth in the New York Uniform Commercial Code as in effect on the date of this Agreement.

\* \* \* \* \*

If you are in agreement with the foregoing, please sign the form of agreement on the accompanying counterpart of this Agreement and return it to the Company, whereupon the foregoing shall become a binding agreement between you and the Company.

Very truly yours,

GIBRALTAR INDUSTRIES, INC.

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

Name: John E. Flint

Title: Senior Vice President

GIBRALTAR STEEL CORPORATION OF NEW YORK

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

Name: John E. Flint

Title: Senior Vice President

The foregoing is hereby agreed to as of the date thereof.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

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

Vice President

SCHE

INFORMATION RELATING TO PURCHASERS

Name and Address of Purchaser	Aggregate Principal Amount of	Note
	Notes to be Purchased	Denomination(s)
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA	\$25,000,000	\$25,000,000

(1) All payments by wire transfer of immediately available funds for credit to:

Each such wire transfer shall set forth the name of the Company, a reference to "7.35% Senior Secured Note due June 28, 2007, PPN 37476# AA 1", and the due date and application (as among principal, interest and Make-Whole Amount) of the payment being made.

- (2) Address for all notices relating to payments:

The Prudential Insurance Company of America  
c/o Investment Operations Group  
Gateway Center Two, 10<sup>th</sup> Floor  
100 Mulberry Street  
Newark, New Jersey 07102  
Attention: Manager, Billings and Collections  
Telecopier: 973.802.8055

- (3) Address for all communications and notices (including copies of all notices relating to payments):

The Prudential Insurance Company of America  
c/o Prudential Capital Group  
1114 Avenue of the Americas, 30<sup>th</sup> Floor  
New York, NY 10036  
Attention: Managing Director  
Telecopier: 212.626.2077

- (4) Recipient of telephonic prepayment notices:

Manager, Trade Management Group  
Telephone: 973.802.8107  
Telecopier: 800.224.2778

- (5) Tax Identification No.: 22-1211670

## SCHEDULE B

### DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

**"Acquisition"** means and includes (whether in one transaction or a series of transactions) (i) any acquisition on a going concern basis (whether by purchase, lease or otherwise) of any facility and/or business or business unit operated by any Person that is not a Subsidiary of Parent or the Company, and (ii) acquisitions of a majority of the outstanding equity or other similar interests in any such Person (whether by merger, stock purchase or otherwise).

**"Affiliate"** means with respect to a specified Person, any (a) Person who now or hereafter has Control of or is now or hereafter under common Control with, such Person or over whom or over which such Person now or hereafter has Control, (b) any Person who is now or hereafter related by blood, by adoption or by marriage to any such Person or now or hereafter resides in the same home as any Person referred to in clause (a) of this sentence, (c) any Person who is now or hereafter an officer of such Person or (d) any Person who is now or hereafter related by blood, by adoption or by marriage to any Person referred to in clause (c) of this sentence or now or hereafter resides in the same home as any such Person or over whom or over which any such Person now or hereafter has Control.

**"Asset Sale"** means the sale, transfer or other disposition (including by means of Sale and Lease-Back Transactions, and by means of mergers, consolidations, and liquidations of a corporation, partnership or limited liability company of the interests therein of Parent, the Company or any Subsidiary) by Parent, the Company or any Subsidiary to any Person of any of their respective assets, provided that the term Asset Sale specifically excludes (i) any sales, transfers or other dispositions of inventory, or obsolete or excess furniture, fixtures, equipment or other property, real or personal, tangible or intangible, in each case in the ordinary course of business, and (ii) any Event of Loss.

**"Business Day"** means any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

**"Capital Lease"** as applied to any Person means any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of that person.

**"Capitalized Lease Obligations"** means all obligations under Capital Leases of Parent, the Company or any Subsidiary in each case taken at the amount thereof accounted for as liabilities identified as "capital lease obligations" (or any similar words) on a consolidated balance sheet of Parent and its Subsidiaries prepared in accordance with GAAP.

**"Cash Equivalents"** means any of the following

- (i) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than one year from the date of acquisition;
- (ii) Dollar denominated time deposits, certificates of deposit and bankers' acceptances of (x) any lender under the Credit Agreement ("Lender") or (y) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent

thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank, an "Approved Bank"), in each case with maturities of not more than three months from the date of acquisition;

(iii) commercial paper issued by any Lender or Approved Bank or by the parent company of any Lender or Approved Bank and commercial paper issued by, or guaranteed by, any industrial or financial company with a short-term commercial paper rating of at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's, or guaranteed by any industrial company with a long term unsecured debt rating of at least A or A2, or the equivalent of each thereof, from S&P or Moody's, as the case may be, and in each case maturing within 90 days after the date of acquisition;

(iv) fully collateralized repurchase agreements entered into with any Lender or Approved Bank having a term of not more than 30 days and covering securities described in clause (i) above;

(v) investments in money market funds substantially all the assets of which are comprised of securities of the types described in clauses (i) through (iv) above;

(vi) investments in money market funds access to which is provided as part of "sweep" accounts maintained with a Lender or an Approved Bank;

(vii) investments in industrial development revenue bonds that (A) "re-set" interest rates not less frequently than quarterly, (B) are entitled to the benefit of a remarketing arrangement with an established broker dealer; and (C) are supported by a direct pay letter of credit covering principal and accrued interest that is issued by an Approved Bank; and

(viii) investments in pooled funds or investment accounts consisting of investments of the nature described in the foregoing clause (vii).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same may be amended from time to time, 42 U.S.C. Section 9601 et seq.

"Change of Control" means any Person or related Persons (other than members of the Kenneth Lipke family, their heirs or estates or trusts for the benefit of members of the Kenneth Lipke family) shall own 50% or more of outstanding capital stock of the Company or a sufficient number of the shares of the outstanding capital stock of the Company to elect a majority of the Company's board of directors.

"Claims" shall have the meaning set forth in the definition of "Environmental Claims."

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"Collateral" is defined in the Security Agreements.

"Collateral Agent" means KeyBank National Association, as Collateral Agent, under the Security Agreements on behalf of the Secured Lender Group, and any successor Collateral Agent.

"Collateral Documents" means, collectively, the Guaranty Agreements and the Security Agreements.

"Company" means Gibraltar Steel Corporation of New York, a Delaware corporation, and its successors and permitted assigns.

"Confidential Information" is defined in Section 20.

"Consideration" means in connection with an Acquisition, the aggregate consideration paid, including borrowed funds, cash, the issuance of securities or notes, the assumption or incurring of liabilities (direct or contingent), the payment of consulting fees or fees for a covenant not to compete and any other consideration paid for the purchase.

"Consolidated" or "Parent on a Consolidated basis" means the consolidation of the accounts of Parent and its Subsidiaries in accordance with GAAP, including principles of consolidation, consistent with those applied in the preparation of Parent's Consolidated audited financial statements.

"Consolidated Capital Expenditures" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events amounts expended or capitalized under Capital Leases and Synthetic Leases but excluding any amount representing capitalized interest) by Parent, the Company and any Subsidiary during that period that, in conformity with GAAP, are or are required to be included in the property, plant or equipment reflected in the consolidated balance sheet of Parent and its Subsidiaries.

"Consolidated Depreciation and Amortization Expense" means, for any period, all depreciation and amortization expenses of the Parent and its Subsidiaries, all as determined for Parent and its Subsidiaries on a consolidated basis in accordance with GAAP.

"Consolidated EBIT" means, for any period, Consolidated Net Income for such period; plus (A) the sum of the amounts for such period included in determining such Consolidated Net Income of (i) Consolidated Interest Expense and (ii) Consolidated Income Tax Expense, provided that, notwithstanding anything to the contrary contained herein, the Parent's Consolidated EBIT for any Testing Period shall (x) include the appropriate financial items for any Person or business unit that has been acquired by Parent, the Company or any Subsidiary for any portion of such Testing Period prior to the date of acquisition on a pro forma basis (but excluding anticipated operating synergies), and (y) exclude the appropriate financial items for any Person or business unit that has been disposed of by Parent, the Company or any Subsidiary, for the portion of such Testing Period prior to the date of disposition, in the case of clauses (x) and (y), subject to the Required Holders' reasonable discretion and supporting documentation acceptable to the Required Holders.

"Consolidated EBITDA" means, for any period, Consolidated Net Income for such period; plus (A) the sum of the amounts for such period included in determining such Consolidated Net Income of (i) Consolidated Interest Expense, (ii) Consolidated Income Tax Expense, (iii) Consolidated Depreciation and Amortization Expense, and (iv) extraordinary and other non-recurring non-cash losses and charges; less (B) gains on sales of assets and other extraordinary gains and other non-recurring gains; all as determined for Parent and its Subsidiaries on a consolidated basis in accordance with GAAP; provided that, notwithstanding anything to the contrary contained herein, Parent's Consolidated EBITDA for any Testing Period shall (x) include the appropriate financial items for any Person or business unit that has been acquired by Parent, the Company or any Subsidiary for any portion of such Testing Period prior to the date of acquisition on a pro forma basis (but excluding anticipated operating synergies), and (y) exclude the appropriate financial items for any Person or business unit that has been disposed

of by a Parent, the Company or any Subsidiary, for the portion of such Testing Period prior to the date of disposition, in the case of clauses (x) and (y), subject to Required Holders' reasonable discretion and supporting documentation acceptable to Required Holders.

"Consolidated Income Tax Expense" means for any period, all provisions for taxes based on the net income of Parent and its Subsidiaries (including, without limitation, any additions to such taxes, and any penalties and interest with respect thereto), all as determined for Parent and its Subsidiaries on a consolidated basis in accordance with GAAP.

"Consolidated Interest Expense" means, for any period, total interest expense (including that which is capitalized, that which is attributable to Capital Leases or Synthetic Leases and the pre-tax equivalent of dividends payable on Redeemable Stock) of Parent and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of Parent and its Subsidiaries including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Hedge Agreements.

"Consolidated Net Income" means for any period, the net income (or loss) of Parent and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

"Consolidated Net Rent Expense" means, for any period, the total amount of rent or similar obligations required to be paid during such period by Parent and its Subsidiaries in respect of Operating Leases, as determined on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

"Consolidated Net Worth" means at any time for the determination thereof all amounts that, in conformity with GAAP would be included under the caption "total stockholders' equity" (or any like caption) on a consolidated balance sheet of Parent and its Subsidiaries as at such date, provided that in no event shall Consolidated Net Worth include any amounts in respect of Redeemable Stock.

"Consolidated Senior Funded Debt" means the Consolidated Total Funded Debt exclusive of Subordinated Indebtedness.

"Consolidated Total Funded Debt" means the sum (without duplication) of all Indebtedness of Parent and its Subsidiaries for borrowed money, all as determined on a consolidated basis.

"Control" means (i) the power to vote 5% or more of the outstanding shares of any class of stock of a Person which is a corporation, (ii) the beneficial ownership of 5% or more of the outstanding shares of any class of stock of a Person which is a corporation or (iii) the power to direct or cause the direction of the management and policies of a Person which is not a corporation, whether by ownership of any stock or other ownership interest, by agreement or otherwise, in each case by or on behalf of a single Person or group of Persons acting as a group for the purposes of filing Form 13-D with the Securities and Exchange Commission.

"Credit Agreement" means that certain Credit Agreement, as of even date herewith, among Parent, the Company, KeyBank National Association, as Administrative Agent, Swing Line Lender, Letter of Credit Issuer, Lead Arranger and Book Runner, each of the Lenders a party thereto and each of the other parties thereto, as it may be amended, modified, restated, extended or supplemented from time to time.

"Default" means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"Default Rate" means that rate of interest that is the greater of (i) 2% per annum above the rate of interest stated in clause (a) of the first paragraph of the Notes or (ii) 2% over the rate of interest publicly announced by Bank of New York in New York, New York as its "base" or "prime" rate.

"Domestic Subsidiary" means any Subsidiary organized under the laws of the United States of America, any State thereof, the District of Columbia, or any United States possession.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law or any permit issued under any such law (hereafter "Claims"), including, without limitation, (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the storage, treatment or Release (as defined in CERCLA) of any Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Law" means any applicable Federal, state, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy and rule of common law now or hereafter in effect and in each case as amended, and any binding and enforceable judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment issued to or rendered against Parent, the Company or any Subsidiary relating to the environment, employee health and safety or Hazardous Materials, including, without limitation, CERCLA; RCRA; the Federal Water Pollution Control Act, 33 U.S.C. Section 2601 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. Section 1801 et seq., and the Occupational Safety and Health Act 29 U.S.C. Section 651 et seq. (to the extent it regulates occupational exposure to Hazardous Materials); and any state and local or foreign counterparts or equivalents, in each case as amended from time to time.

"Environmental Permits" means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with ownership, lease, purchase, transfer, closure, use and/or operation of any property for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials or the sale, transfer or conveyance of any such property.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date hereof and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

"ERISA Affiliate" means each person (as defined in Section 3(9) of ERISA), which together with Parent, the Company or a Subsidiary, would be deemed to be a "single employer" (i) within the meaning of Section 414(b), (c), (m) or (o) of the Code or (ii) as a result of Parent, the Company or

a Subsidiary being or having been a general partner of such person.

"Event of Default" is defined in Section 11.

"Event of Loss" means, with respect to any property, (i) the actual or constructive total loss of such property or the use thereof, resulting from destruction, damage beyond repair, or the rendition of such property permanently unfit for normal use from any casualty or similar occurrence whatsoever, (ii) the destruction or damage of a portion of such property from any casualty or similar occurrence whatsoever under circumstances in which such damage cannot reasonably be expected to be repaired, or such property cannot reasonably be expected to be restored to its condition immediately prior to such destruction or damage, within 90 days after the occurrence of such destruction or damage, (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, any property, or (iv) in the case of any property located upon a leasehold, the termination or expiration of such leasehold if such termination is likely to materially impair the Collateral Agent's access to any material portion of the Collateral.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Subsidiaries" means GIT Ltd., Gibraltar Construction Products, Inc. and GSC Flight Service Inc.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"GAAP" means of the date of any determination, generally accepted accounting principles as promulgated by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants, consistently applied and maintained throughout the relevant periods and from period to period.

"Governmental Authority" means

(a) the government of

(i) the United States of America or any State or other political subdivision thereof, or

(ii) any jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

"Guarantee" means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

(a) to purchase such indebtedness or obligation or any property constituting security therefor;

(b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;

(c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or

(d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guarantee, the indebtedness or other obligations that are the subject of such Guarantee shall be assumed to be direct obligations of such obligor.

"Guaranty Agreement" and, collectively, "Guaranty Agreements" means each Guarantee executed and delivered by each of Parent and each of its Subsidiaries, other than the Company substantially in the form of Exhibit B-1 hereto, as it may be amended, modified or supplemented from time to time.

"Hazardous Materials" means (i) any petrochemical or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; and (ii) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous wastes," "restrictive hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar meaning and regulatory effect, under any applicable Environmental Law.

"Hedge Agreement" means (i) any interest rate swap agreement, any interest rate cap agreement, any interest rate collar agreement or other similar agreement or arrangement designed to protect against fluctuations in interest rates, and (ii) any currency swap agreement, forward currency purchase agreement or similar agreement or arrangement designed to protect against fluctuations in currency exchange rates.

"Holder" means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1.

"Holders' Share" means the quotient obtained by dividing (i) the outstanding total liabilities of the Company to Holders under the Notes and hereunder on the date of the applicable notice of prepayment pursuant to Section 8.6 by (ii) the sum of (A) the liabilities described in the preceding clause (i) plus (B) the liabilities of the Company to the "Holders" of the "Notes" issued pursuant to the 2004 Note Agreement plus (C) the liabilities of the Parent and the Company to the Lenders under the Credit Agreement, all as of such notice date.

"Indebtedness" of any Person means without duplication (i) all indebtedness of such Person for borrowed money; (ii) all bonds, notes, debentures and similar debt securities of such person; (iii) the deferred purchase price of capital assets or services that in accordance with GAAP would be shown on the liability side of the balance sheet of such Person; (iv) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder; (v) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances; (vi) all Indebtedness of a second Person secured by any Lien on any property owned by such first Person, whether or not such indebtedness has been assumed; (vii) all Capitalized Lease Obligations of such Person; (viii) the present value, determined on the basis of the

implicit interest rate, of all basic rental obligations under all Synthetic Leases of such Person; (ix) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted, i.e., take-or-pay and similar obligations; (x) all net obligations of such Person under Hedge Agreements; (xi) the full outstanding balance of trade receivables, notes or other instruments sold with full recourse (and the portion thereof subject to potential recourse, if sole with limited recourse), other than in any such case any thereof sold solely for purposes of collection of delinquent accounts; (xii) the stated value, or liquidation value if higher, of all Redeemable Stock of such Person; and (xiii) any Guarantees of such Person (without duplication under clause (vi)); provided, however that (x) neither trade payables nor other similar accrued expenses, in each case arising in the ordinary course of business, nor obligations in respect of insurance policies or performance or surety bonds that themselves are not guarantees of Indebtedness (nor drafts, acceptances or similar instruments evidencing the same nor obligations in respect of letters of credit supporting the payment of the same), shall constitute Indebtedness; and (y) the Indebtedness of any Person shall in any event include (without duplication) the Indebtedness of any other entity (including any general partnership in which such Person is a general partner) to the extent such Person is liable thereon as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide expressly that such Person is not liable thereon.

"Institutional Investor" means (a) any original purchaser of a Note, (b) any holder of a Note holding more than 5% of the aggregate principal amount of the Notes then outstanding, and (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any investment fund or similar vehicle, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated as of even date herewith among the Secured Lender Group, as it may be amended, modified, restated or supplemented from time to time in accordance with its terms.

"Interest Coverage Ratio" shall mean, for any Testing Period, the ratio of (i) Consolidated EBIT to (ii) Consolidated Interest Expense, in each case on a consolidated basis for Parent and its Subsidiaries for the Testing Period.

"Investment" means (i) any direct or indirect purchase or other acquisition by Parent, the Company or any Subsidiary of any of the capital stock or other equity interest of any other Person (other than a Person that is, or after giving effect to such purchase or acquisition would be, a Subsidiary Guarantor), including any partnership or joint venture interest in such Person; or (ii) any loan or advance to, guarantee or assumption of debt or purchase or other acquisition of any other debt of, any Person (other than a Person that is, or after giving effect to such loan, advance or capital contribution would be, a Subsidiary Guarantor), by Parent, the Company or any Subsidiary.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, security interest, lien, charge or encumbrance, or preference, priority or other security agreement or preferential arrangement in respect of any asset of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

"Make-Whole Amount" is defined in Section 8.7.

"Material" means material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of Parent and its Subsidiaries taken as a whole.

"Material Adverse Effect" means any or all of the following (i) any material adverse effect on the business, operations, property, assets, liabilities, financial or other condition or prospects of Parent, the Company or Parent and its Subsidiaries, taken as a whole; (ii) any material adverse effect on the ability of Parent, the Company or any Subsidiary Guarantor to perform any of its obligations under any Related Document to which it is a party; (iii) any material adverse effect on the ability of the Parent and its Subsidiaries, taken as a whole, to pay their liabilities and obligations as they mature or become due; or (iv) any material adverse effect on the validity, effectiveness or enforceability, as against Parent, the Company or any Subsidiary, of any of the Related Documents to which it is a party.

"Maximum Amount" is defined in Section 1.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which Parent, the Company or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

"Multiple Employer Plan" means an employee benefit plan, other than a Multiemployer Plan, to which Parent, the Company or any ERISA Affiliate, and one or more employers other than Parent, the Company or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Parent, the Company or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

"Notes" is defined in Section 1.

"OFAC" is defined in Section 5.23.

"Officer's Certificate" means a certificate of a Senior Financial Officer or of any other officer of Parent and/or the Company, as applicable, whose responsibilities extend to the subject matter of such certificate.

"Operating Lease" as applied to any Person shall mean any lease of any property (whether real, personal or mixed) by that person as lessee that, in conformity with GAAP, is not accounted for as a Capital Lease on the balance sheet of that person.

"Original Note Agreement" is defined in Section 1.

"Other Lists" is defined in Section 5.23.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"Permitted Acquisition" means and includes any Acquisition as to which all of the following conditions are satisfied:

- (i) such Acquisition involves a line or lines of business that will not substantially change the general nature of the business in which Parent, the Company and their Subsidiaries, considered as an entirety, are engaged on the date hereof;
- (ii) no Default or Event of Default shall exist prior to or immediately after giving effect to such Acquisition;

(iii) Parent and its Subsidiaries would, after giving effect to such Acquisition on a pro forma basis, be in compliance with the financial covenants set forth in Sections 10.13 through 10.16.

(iv) Parent and its Subsidiaries would, after giving effect to such Acquisition, on a pro forma basis, have Post-Acquisition Liquidity of no less than \$25,000,000; and

(v) at least five Business Days prior to the completion of such Acquisition, Parent shall have delivered to Holders (A) in the case of any Acquisition in which the aggregate Consideration to be paid is in excess of \$5,000,000 (or in the case of any Acquisition in which the Consideration to be paid, together with the aggregate Consideration paid in connection with all other Permitted Acquisitions made during the same fiscal quarter as such Acquisition, is in excess of the aggregate amount of \$5,000,000), a certificate of a Responsible Officer of Parent demonstrating in reasonable detail, the computation of the financial covenants referred to in Sections 10.13 through 10.16 on a pro forma basis as of the most recently ended fiscal quarter, and (B) in the case of any Acquisition in which the aggregate Consideration is in excess of \$10,000,000, historical financial statements relating to the business or Person to be acquired, financial projections relating to Parent and its Subsidiaries after giving effect to such Acquisition and such other information as Holders may reasonably request.

"Permitted Encumbrances" means Liens which are permitted pursuant to Section 10.4.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated association, government or political subdivision or other entity, body, organization or group.

"Plan" means any multiemployer or single-employer plan, as defined in Section 4001 of ERISA, that is maintained or contributed to by (or to which there is an obligation to contribute by) Parent, the Company, a Subsidiary or an ERISA Affiliate, and each such plan for the five year period immediately following the latest date on which Parent, the Company, a Subsidiary or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to such plan.

"Post-Acquisition Liquidity" shall mean the sum of Unutilized Total Commitment (as defined in the Credit Agreement) and any unencumbered cash balances of Parent and its Subsidiaries.

"Preferred Stock" means any class of capital stock of a corporation that is preferred over any other class of capital stock of such corporation as to the payment of dividends or the payment of any amount upon liquidation or dissolution of such corporation.

"Prohibited Transaction" means a transaction with respect to a Plan that is prohibited under Section 4975 of the Code or Section 406 of ERISA and not exempt from Section 4975 of the Code or Section 408 of ERISA.

"Property" or "Properties" means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

"Prudential" shall mean Prudential Investment Management, Inc.

"Prudential Affiliate" shall mean (i) any corporation or other entity controlling, controlled by, or under common control with, Prudential and (ii) any managed account or investment fund which is managed by Prudential or a Prudential Affiliate described in clause (i) of this definition. For purposes of this definition the terms "control", "controlling" and "controlled" shall mean the ownership, directly or through subsidiaries of a majority of a corporation's or other Person's voting stock or equivalent voting securities or interests.

"Purchaser" and "Purchasers" are defined in Section 1.

"RCRA" means the Resource Conservation and Recovery Act, as the same may be amended from time to time, 42 U.S.C. Section 6901 et seq.

"Redeemable Stock" means with respect to any Person any capital stock or similar equity interests of such person that: (i) is by its terms subject to mandatory redemption, in whole or in part, pursuant to a sinking fund, scheduled redemption or similar provisions, at any time prior to the maturity date of the Notes; or (ii) otherwise is required to be repurchased or retired on a scheduled date or dates, upon the occurrence of any event or circumstance, at the option of the holder or holders thereof, or otherwise, at any time prior to the maturity date of the Notes other than any such repurchase or retirement occasioned by a "change of control" or similar event.

"Related Documents" means this Agreement, any Note, any Collateral Document, the Intercreditor Agreement and any other document, certificate or other writing executed in connection with any of the foregoing.

"Release" means the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. section 9601, et seq.), and the regulations promulgated thereunder.

"Reportable Event" means an event described in Section 4043 of ERISA or the regulations thereunder with respect to a Plan, other than those events as to which the notice requirement is waived under subsections .22, .23, .25, .27, .28, .29, .30, .31, .32, .34, .35, .62, .63, .64, .65 or .67 of PBGC Regulation Section 4043.

"Required Holders" means, at any time, the Holders of at least 50% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by Parent, the Company or any Affiliates of either).

"Responsible Officer" means any Senior Financial Officer and any other officer of Parent and/or the Company, as the case may be, with responsibility for the administration of the relevant portion of this Agreement.

"Sale and Lease-Back Transaction" means any arrangement with any person providing for the leasing by Parent, the Company or any Subsidiary of any property (except for temporary leases for a term, including any renewal thereof, of not more than one year and except for leases between Parent or the Company and a Subsidiary or between Subsidiaries), which property has been or is to be sold or transferred by Parent, the Company or a Subsidiary.

"SDN List" is defined in Section 5.23.

"Secured Lender Group" means the Collateral Agent, any lender under the Credit Agreement, any "Holder" under the 2004 Note Agreement and any Holder.

"Securities Act" means the Securities Act of 1933, as amended from time to time.

"Security Agreements" means collectively, each Security Agreement executed by Parent or any Subsidiary Guarantor in favor of the Collateral Agent on behalf of the Secured Lender Group, on the date hereof, and each additional Security Agreement executed by Parent or any Subsidiary Guarantor in favor of the Collateral Agent on behalf of the Secured Lender Group, each in substantially the form of Exhibit B-2 hereto, as each of the foregoing may be amended, modified or supplemented from time to time in accordance with its terms.

"Security Interests" means a Lien granted to the Collateral Agent on behalf of the Secured Lender Group in Accounts, Inventory, Equipment, Investment Property, Documents, Instruments, General Intangibles, Chattel Paper, Letter of Credit Rights, Deposit Account and Fixtures, whether now owned or existing or hereafter acquired or arising wherever located, of the Parent and each Subsidiary Guarantor and any and all supporting obligations therefor and all products and procedures thereof.

"Senior Financial Officer" means the chief financial officer, principal accounting officer, treasurer or comptroller of the Company.

"Senior Funded Debt to EBITDA Ratio" means, for any Testing Period, the ratio of (i) Consolidated Senior Funded Debt to (ii) Consolidated EBITDA, in each case on a consolidated basis for Parent and its Subsidiaries for such Testing Period.

"Standard Permitted Liens" means the following:

- (i) Liens for taxes not yet delinquent or Liens for taxes being contested in good faith and by appropriate proceedings for which adequate reserves in accordance with GAAP have been established;
- (ii) Liens in respect of property or assets imposed by law that were incurred in the ordinary course of business, such as carriers', warehousemen's, materialmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, that do not in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of Parent, the Company or any Subsidiary and do not secure any Indebtedness.
- (iii) Liens created by the Security Documents;
- (iv) Liens arising from judgments, decrees or attachments in circumstances not consisting an Event of Default under Section 11(i).
- (v) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; and Liens to secure the performance of tenders, statutory obligations, contract bids, government contracts, performance and return-of-money bonds and other similar obligations, incurred in the ordinary course of business (exclusive of obligations in respect of the payment for borrowed money), whether pursuant to statutory requirements, common law or consensual arrangements;
- (vi) Leases or subleases granted in the ordinary course of business to others not interfering in any material respect with the business of Parent, the Company or any Subsidiary and any interest or title of a lessor under any lease not in violation of this Agreement;
- (vii) easements, rights-of-way, zoning or other restrictions, charges, encumbrances, defects in title, prior rights of other Persons, and obligations contained in similar instruments, in each case that do not involve, and are not likely to involve at any future time, either individually or in the aggregate, (A) a substantial and prolonged interruption or disruption of the business activities of Parent, the Company and Subsidiaries, or (B) a Material Adverse Effect;
- (viii) Liens arising from the rights of lessors under leases (including financing statements regarding property subject to lease) permitted pursuant to this Agreement, provided that such Liens are only in respect of the property subject to, and secure only, the respective lease (and any other lease with the same or an affiliated lessor); and
- (ix) rights of consignors of goods, whether or not perfected by the filing of a financing statement under the UCC.

"Subsidiary" means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a "Subsidiary" is a reference to a Subsidiary of Parent.

"Subsidiary Guarantor" means each Subsidiary a party to a Guaranty Agreement.

"Subordinated Debt" means Indebtedness of Parent, the Company or any Subsidiary which is subordinated, in form and content satisfactory to the Required Holders, to any and all Indebtedness owing to any of the Holders.

"Subordinated Note Agreement" means that certain Amended and Restated Subordinated Note Agreement, dated as of even date herewith, among Parent, the Company and The Prudential Insurance Company of America, amending and restating the Subordinated Note Agreement, dated as of July 3, 2002, among such parties, as it may be amended, modified, restated or supplemented from time to time in accordance with its terms.

"Synthetic Lease" means any lease (i) that is accounted for by the lessee as an Operating Lease, and (ii) under which the lessee is intended to be the "owner" of the leased property for Federal income tax purposes.

"Testing Period" means for any determination a single period consisting of the four consecutive fiscal quarters of Parent and its Subsidiaries then last ended (whether or not such quarters are all within the same fiscal year), except that if a particular provision of this Agreement indicates that a Testing Period shall be of a different specified duration, such Testing Period shall consist of the particular fiscal quarter or quarters then last ended that are so indicated in such provision.

"Total Funded Debt to EBITDA Ratio" means, for any Testing Period, the ratio of (i) Consolidated Total Funded Debt to (ii) Consolidated EBITDA, in each case on a consolidated basis for Parent and its Subsidiaries for such Testing Period.

"2004 Note Agreement" means the Amended and Restated Note Purchase Agreement, dated as of even date herewith, among the Company, Parent and The Prudential Insurance Company of America and Pruco Life Insurance Company, amending and restating the Note Purchase



Agreement, dated as of June 18, 2004, among such parties, as it may be amended, modified, restated or supplemented from time to time in accordance with its terms.

"Unfunded Current Liability" of any Plan shall mean the amount, if any, by which the actuarial present value of the accumulated plan benefits under the Plan as of the close of its most recent plan year exceeds the fair market value of the assets allocable thereto, each determined in accordance with Statement of Financial Accounting Standards No. 87, based upon the actuarial assumptions used by the Plan's actuary in the most recent annual valuation of the Plan.

EXHIBIT 1

[FORM OF NOTE]

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE OFFERED OR SOLD IN VIOLATION OF SUCH ACT.

GIBRALTAR STEEL CORPORATION OF NEW YORK

7.35% SENIOR SECURED NOTE DUE JULY \_\_, 2007

No. [\_\_\_\_]

\_\_\_\_\_ , \_\_\_\_

\$25,000,000

PPN[\_\_\_\_\_]

FOR VALUE RECEIVED, the undersigned, Gibraltar Steel Corporation of New York (herein called the "*Company*"), a corporation organized and existing under the laws of the State of New York, hereby promises to pay to THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, or registered assigns, the principal sum of TWENTY-FIVE MILLION DOLLARS on July 3, 2007, with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance thereof at the rate of 7.35% per annum from the date hereof, payable quarterly, on the 3rd day of January, April, July and October in each year, commencing with the January, April, July and October next succeeding the date hereof, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law on any overdue payment (including any overdue prepayment) of principal, any overdue payment of interest and any overdue payment of any Make-Whole Amount (as defined in the Note Purchase Agreement referred to below), payable quarterly as aforesaid (or, at the option of the registered holder hereof, on demand), at a rate per annum from time to time equal to the greater of (i) 7.35% or (ii) 2.0% over the rate of interest publicly announced by Bank of New York from time to time in New York, New York as its "base" or "prime" rate.

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at Bank of New York or at such other place as the holder of this Note shall have designated by written notice to the Company as provided in the Note Purchase Agreement referred to below.

This Note is one the Senior Secured Notes (herein called the "*Notes*") issued pursuant to that certain Note Purchase Agreement, dated as of July 3, 2002 (as from time to time amended, modified, restated or supplemented, the "*Note Purchase Agreement*"), among Gibraltar Industries, Inc., formerly known as Gibraltar Steel Corporation, the Company and the respective purchasers named therein and is entitled to the benefits thereof. This Note is also entitled to the benefits of each Guaranty Agreement, each Security Agreement and each other Related Document, as each such term is defined in the Note Purchase Agreement. Each holder of this Note will be deemed, by its acceptance hereof, (i) to have agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (ii) to have made the representation set forth in Section 6.2 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

This Note is subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default, as defined in the Note Purchase Agreement, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

GIBRALTAR STEEL CORPORATION  
OF NEW YORK

By \_\_\_\_\_

Name:

Title:

**GIBRALTAR STEEL CORPORATION  
OF NEW YORK**

**\$25,000,000**

**8.98% Senior Subordinated Notes due January 3, 2008\**

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**AMENDED AND RESTATED SUBORDINATED NOTE  
PURCHASE AGREEMENT**

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**Dated as of April 1, 2005**

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**SCHEDULE 5.4 -- Subsidiaries of the Company and  
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**SCHEDULE 5.15 -- Existing Indebtedness**

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**SCHEDULE 10.7 -- Permitted Investments**

**EXHIBIT 1 -- Form of 8.98% Senior Note due January 3, 2008**

**EXHIBIT 3.5(a) -- Form of Opinion of Special Counsel for the  
Company**

**GIBRALTAR STEEL CORPORATION**

**OF NEW YORK**

**3556 Lakeshore Road**

**Buffalo, New York 14219**

**8.98% Senior Subordinated Notes due January 3, 2008**

**as of April 1, 2005**

TO EACH OF THE PURCHASERS LISTED IN

THE ATTACHED SCHEDULE A:

Ladies and Gentlemen:

Gibraltar Steel Corporation of New York, a New York corporation (the "Company"), and Gibraltar Industries, Inc. f/k/a Gibraltar Steel Corporation, a Delaware corporation ("Parent"), and you (sometimes referred to individually as a "Purchaser" and collectively as the "Purchasers") are parties to a certain Note Purchase Agreement, dated as of July 3, 2002 (as amended and in effect on the date hereof, the "Original Note Agreement"), pursuant to which Purchasers have purchased the "Notes" (as defined below). The Company, Parent and Purchasers have agreed to amend certain covenants and events of default set forth in the Original Note Agreement. As a convenience to the Company, Parent and Purchasers, the Company, Parent and Purchasers have agreed to effect such amendments by amending and restating the Original Note Agreement in its entirety as hereinafter set forth, upon and subject to the terms and conditions hereof. This amendment and restatement is not intended to be, and shall not be deemed or construed as, a repayment or a novation of the indebtedness outstanding pursuant to the Original Note Agreement. The Company, Parent and Purchasers hereby agree that the Original Note Agreement is hereby amended and restated in its entirety to read as follows:

**1. ISSUANCE of Notes.**

On July 3, 2002, pursuant to the Original Note Agreement, the Company issued and sold to Purchasers \$25,000,000 in aggregate principal amount of its 8.98% Senior Subordinated Notes due July 3, 2008, in substantially the form set out in Exhibit 1 (the "Notes", such term to include any such notes issued in substitution therefor pursuant to Section 13 of this Agreement).

The \$25,000,000 in aggregate principal amount of Notes issued by the Company to Purchasers pursuant to the Original Note Agreement shall remain outstanding pursuant to this Agreement.

**2. Sale and Purchase of Notes.**

Subject to the terms and conditions of this Agreement, the Company has issued and sold to you and you have purchased from the Company Notes in the principal amount specified opposite your name in Schedule A at the purchase price of 100% of the principal amount thereof.

**3. Conditions to effectiveness of agreement.**

The effectiveness of this Agreement is subject to the fulfillment to each Purchaser's satisfaction, on or prior to the date of this Agreement of the following conditions:

**3.1 Related Documents.**

Each of the following Related Documents shall have been duly executed and delivered by the parties thereto:

- (a) this Agreement; and
- (b) each of the Notes.

**3.2 Representations and Warranties.**

The representations and warranties of Parent, the Company and Subsidiaries in this Agreement or any other Related Document to which it is a party shall be correct on the date of this Agreement.

**3.3 Performance; No Default.**

Each of Parent and the Company shall have performed and complied with all agreements and conditions contained in this Agreement or any other Related Document to which it is a party required to be performed or complied with by it prior to or at the date of this Agreement and no Default or Event of Default shall have occurred and be continuing. Neither Parent nor the Company nor any Subsidiary shall have entered into any transaction since December 31, 2003 that would have been prohibited by Sections 10.1, 10.6 or 10.7 hereof had such Sections applied since such date.

**3.4 Certificates.**

- (a) *Officer's Certificate.* Parent and the Company shall have delivered to you an Officer's Certificate, dated the date hereof, certifying that the conditions specified in Sections 3.2, 3.3 and 3.8 have been fulfilled.
- (b) *Secretary's Certificate.* Each of Parent and the Company shall have delivered to you a certificate certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of each Related Document to which it is a party including without limitation its constituent documents.
- (c) *Good Standing Certificates.* Each of Parent and the Company shall have delivered good standing certificates for it, issued by the Secretary of State or other appropriate official of its jurisdiction of incorporation and each jurisdiction where the conduct of its business activities or ownership of its property necessitates qualification.

**3.5 Opinions of Counsel.**

You shall have received opinions in form and substance satisfactory to you, dated the date hereof (a) from Lippes, Mathias, Wexler & Friedman LLP, counsel for the Company, covering the matters set forth in Exhibit 3.5(a) and covering such other matters incident to the transactions

contemplated hereby as you or your counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to you) and (b) from King & Spalding LLP, your special counsel in connection with such transactions, covering such matters incident to such transactions as you may reasonably request.

### 3.6 Credit Agreement.

Each Purchaser has received a true, correct and complete copy of the Credit Agreement (including all Exhibits and Schedules thereto) and any other document executed in connection therewith and all amendments and waivers relating thereto. As of the date hereof, none of such documents and agreements shall have been amended or supplemented, nor shall have any of the provisions thereof been waived except pursuant to a written agreement or instrument which has been consented to by each of the Holders in writing. Each of the Credit Agreement and each such other document has been duly executed and delivered by the parties thereto and is in full force and effect.

### 3.7 Payment of Special Counsel Fees.

Without limiting the provisions of Section 16.1, the Company shall have paid on or before the date of this Agreement the reasonable fees, charges and disbursements of your special counsel referred to in Section 3.5 to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to the date of this Agreement.

### 3.8 Changes in Corporate Structure.

Each of Parent and the Company shall not have changed its jurisdiction of incorporation or been a party to any merger or consolidation and shall not have succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

### 3.9 Senior Note Agreement; 2004 Senior Note Agreement.

On or prior to the date hereof, the Senior Note Agreement and the 2004 Senior Note Agreement shall have been amended in a manner satisfactory to each Purchaser such that the covenants and events of default set forth therein are consistent with those set forth herein.

### 3.10 Amendment Fee; Proceedings and Documents.

The Company shall have paid to each Purchaser (in accordance with its pro rata share of the Notes) an amendment fee in the amount of \$15,000 in the aggregate as to all Purchasers. All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to you and your special counsel, and you and your special counsel shall have received all such counterpart originals or certified or other copies of such documents as you or they may reasonably request.

## 4. [INTENTIONALLY NOT USED]

### 5. *Representations and Warranties.*

Each of Parent and the Company represents and warrants to you that:

#### 5.1 Organization; Power and Authority.

Each of Parent and the Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of Parent and the Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts, to execute and deliver each Related Document to which it is a party and to perform the provisions thereof.

#### 5.2 Authorization, Etc.

Each Related Document has been duly authorized by all necessary corporate action on the part of Parent and the Company, and each Related Document constitutes a legal, valid and binding obligation of Parent and the Company, as the case may be, enforceable against it in accordance with its terms.

#### 5.3 Disclosure.

Except as disclosed in Schedule 5.3, this Agreement, the documents, certificates or other writings delivered to you by or on behalf of the Company in connection with the transactions contemplated hereby and the financial statements listed in Schedule 5.5, taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as expressly described in Schedule 5.3, or in one of the documents, certificates or other writings identified therein, or in the financial statements listed in Schedule 5.5, since December 31, 2004, there has been no change in the financial condition, operations, business, properties or prospects of Parent, the Company or any Subsidiary except changes that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect. There is no fact known to Parent or the Company that could reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the other documents, certificates and other writings delivered to you by or on behalf of Parent or the Company specifically for use in connection with the transactions contemplated hereby.

#### 5.4 Organization and Ownership of Shares of Subsidiaries; Affiliates.

(a) Schedule 5.4 contains (except as noted therein) complete and correct lists (i) of Parent's Subsidiaries, showing, as to each Subsidiary, the correct name thereof, the jurisdiction of its organization, and the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by Parent and each other Subsidiary, (ii) of Parent's Affiliates, other than Subsidiaries, and (iii) of Parent's directors and senior officers of Parent and the Company.

(b) All of the outstanding shares of capital stock or similar equity interests of each Subsidiary shown in Schedule 5.4 as being owned by Parent and its Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by Parent or another Subsidiary free and clear of Lien.

(c) Each Subsidiary identified in Schedule 5.4 is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact, to execute and deliver each Related Document to which it is a party and to perform the provisions thereof.

(d) No Subsidiary is a party to, or otherwise subject to any legal restriction or any agreement (other than this Agreement, the agreements listed on Schedule 5.4 and customary limitations imposed by corporate law statutes) restricting the ability of such Subsidiary to pay dividends out of profits or make any other similar distributions of profits to Parent or any of its Subsidiaries that owns outstanding shares of capital stock or similar equity interests of such Subsidiary.

#### 5.5 Financial Statements.

Parent has delivered to each Purchaser copies of the Consolidated financial statements of Parent and its Subsidiaries listed on Schedule 5.5. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of Parent and its Subsidiaries as of the respective dates specified in such Schedule and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments).

#### 5.6 Compliance with Laws, Other Instruments, Etc.

The execution, delivery and performance by Parent or the Company of any Related Document to which it is a party will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of Parent, the Company or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other agreement or instrument to which Parent, the Company or any Subsidiary is bound or by which Parent, the Company or any Subsidiary or any of their respective properties may be bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to Parent, the Company or any Subsidiary or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to Parent, the Company or any Subsidiary.

#### 5.7 Governmental Authorizations, Etc.

No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by Parent or the Company of any Related Document to which it is a party.

#### 5.8 Litigation; Observance of Agreements, Statutes and Orders.

(a) There are no actions, suits or proceedings pending or, to the knowledge of Parent or the Company, threatened against Parent, the Company or any Subsidiary or any property of Parent, the Company or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b) Neither Parent nor the Company nor any Subsidiary is in default under any term of any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Laws) of any Governmental Authority, which default or violation, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

#### 5.9 Taxes.

Parent and its Subsidiaries have filed all tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which is not individually or in the aggregate Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which Parent or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. Neither Parent nor the Company knows of any basis for any tax or assessment that could reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of Parent and its Subsidiaries in respect of Federal, state or other taxes for all fiscal periods are adequate. The Federal income tax liabilities of Parent and its Subsidiaries have been determined by the Internal Revenue Service and paid for all fiscal years up to and including the fiscal year ended December 31, 2000.

#### 5.10 Title to Property; Leases.

Parent and its Subsidiaries have good and sufficient title to their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 or purported to have been acquired by Parent or any Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the aggregate are Material are valid and subsisting and are in full force and effect in all material respects.

#### 5.11 Licenses, Permits, Etc.

(a) Parent and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others;

(b) to the knowledge of Parent and the Company, no product of Parent or any of its Subsidiaries infringes in any material respect any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other Person; and

(c) to the knowledge of Parent and the Company, there is no Material violation by any Person of any right of Parent or any of its Subsidiaries with respect to any patent, copyright, service mark, trademark, trade name or other right owned or used by the Company or any of its Subsidiaries.

### 5.12 Compliance with ERISA.

(a) Parent, the Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect. Neither Parent, the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that could reasonably be expected to result in the incurrence of any such liability by Parent, the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of Parent, the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. The term "benefit liabilities" has the meaning specified in section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in section 3 of ERISA.

(c) Parent, the Company and their ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(d) The expected postretirement benefit obligation (determined as of the last day of Parent's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of Parent and its Subsidiaries is not Material.

(e) The execution and delivery of any Related Document will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by Parent and the Company in the first sentence of this Section 5.12(e) is made in reliance upon and subject to (i) the accuracy of your representation in Section 6.2 as to the sources of the funds used to pay the purchase price of the Notes to be purchased by you and (ii) the assumption, made solely for the purpose of making such representation, that Department of Labor Interpretive Bulletin 75-2 with respect to prohibited transactions remains valid in the circumstances of the transactions contemplated herein.

### 5.13 Private Offering by the Company.

Neither Parent, the Company nor anyone acting on its behalf has offered the Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any person other than you and not more than 12 other Institutional Investors, each of which has been offered the Notes at a private sale for investment. Neither Parent nor the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of Section 5 of the Securities Act.

### 5.14 Use of Proceeds; Margin Regulations.

The Company has applied the proceeds of the sale of the Notes for the repayment of Indebtedness. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute any of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock will constitute any portion of the value of such assets. As used in this Section, the terms "margin stock" and "purpose of buying or carrying" shall have the meanings assigned to them in said Regulation X.

### 5.15 Existing Indebtedness; Future Liens.

(a) Except as described therein, Schedule 5.15 sets forth a complete and correct list of all outstanding Indebtedness of Parent and its Subsidiaries as of December 31, 2004, since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Indebtedness of Parent or its Subsidiaries. Neither Parent nor any Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of Parent or such Subsidiary and no event or condition exists with respect to any Indebtedness of Parent or any Subsidiary that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Except as disclosed in Schedule 5.15, neither Parent nor any Subsidiary of Parent has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien not permitted by Section 10.3.

### 5.16 Foreign Assets Control Regulations, Etc.

Neither the sale of the Notes by the Company under the Original Note Agreement nor its use of the proceeds thereof has violated the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

### 5.17 Status under Certain Statutes.

Neither Parent nor the Company nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, as amended, the Public Utility Holding Company Act of 1935, as amended, the Interstate Commerce Act, as amended, or the Federal Power Act, as amended.

### 5.18 Environmental Matters.

(a) Neither Parent nor the Company nor any Subsidiary has knowledge of any claim or has received any notice of any claim, and no proceeding has been instituted raising any claim against Parent or the Company or any of its Subsidiaries or any of their respective real properties now or formerly owned, leased or operated by any of them or other assets, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.



(b) Neither Parent nor the Company nor any Subsidiary has knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.

(c) Neither Parent nor the Company nor any of its Subsidiaries has (i) stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them or (ii) disposed of any Hazardous Materials in a manner contrary to any Environmental Laws in the case of clause (i) and (ii) in any manner that could reasonably be expected to result in a Material Adverse Effect.

(d) All buildings on all real properties now owned, leased or operated by Parent or any of its Subsidiaries are in compliance with applicable Environmental Laws, except where failure to comply could not reasonably be expected to result in a Material Adverse Effect.

#### 5.19 Fiscal Year.

The fiscal year of Parent and the Company is the calendar year ending December 31.

#### 5.20 Default.

There does not exist any Default or Event of Default.

#### 5.21 Securities.

Each outstanding share of stock, debenture, bond, note and other security of Parent, the Company and each Subsidiary has been validly issued in full compliance with each statute, regulation and other law, and, if a share of stock, is fully paid and nonassessable.

#### 5.22 USA Patriot Act.

Neither Parent nor the Company nor any Subsidiary (i) is listed on the Specially Designated Nationals and Blocked Persons List (the "SDN List") maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC"), or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Order (such other lists are referred to herein, collectively, as the "Other Lists"; the SDN List and the Other Lists are referred to herein, collectively, as the "Lists"), (ii) nor is it a person who has been determined by competent authority to be subject to the prohibitions contained in Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Executive Orders in respect thereof, (iii) as of the date hereof, it is not controlled by, nor does it act for or on behalf of, any person on the Lists or any other person who has been determined by competent authority to be subject to the prohibitions contained in Executive Order No. 13224 (Sept. 23, 2001) or similar prohibitions contained in the rules and regulations of OFAC or any enabling legislation or other Executive Orders in respect thereof, and (iv) it is in material compliance with the requirements of Executive Order No. 13224 (Sept. 23, 2001) and other similar requirements contained in the rules and regulations of OFAC and in any enabling legislation or other Executive Orders in respect thereof.

#### 5.23 Solvency.

As of the date hereof and after giving the effect to the transactions contemplated hereunder and under the Credit Agreement on such date, and to any other Indebtedness being incurred on such date in connection therewith (a) the amount of the "present fair salable value" of the assets of Parent and the Company will, as of such date, exceed the amount of all "liabilities of Parent and the Company, contingent or otherwise," as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the solvency of debtors, (b) the present fair salable value of the assets of Parent and the Company will, as of such date, be greater than the amount that will be required to pay the liability of Parent and the Company on its debts as such debts become absolute and matured, (c) Parent and the Company will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) Parent and the Company will be able to pay its debts as they mature. For purposes of this Section 5.23, "debt" means "liability or a claim", and "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

### 6. Representations of each Purchaser.

#### 6.1 Purchase for Investment.

You represent that you have purchased the Notes for your own account or for one or more separate accounts maintained by you or for the account of one or more pension or trust funds and not with a view to the distribution thereof, *provided* that the disposition of your or their property shall at all times be within your or their control. You understand that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

#### 6.2 Source of Funds.

You represent that at least one of the following statements is an accurate representation as to each source of funds (a "Source") used by you to pay the purchase price of the Notes purchased by you under the Original Note Agreement:

(a) the Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption ("PTE") 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the "NAIC Annual Statement")) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser's state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser's fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account

(or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an "investment fund" (within the meaning of Part V of PTE 84-14 (the "QPAM Exemption")) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part V of the QPAM Exemption), no employee benefit plan's assets that are included in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Section V(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM (applying the definition of "control" in Section V(e) of the QPAM Exemption) owns a 5% or more interest in the Company and (i) the identity of such QPAM and (ii) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Company in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a "plan(s)" (within the meaning of Section IV of PTE 96-23 (the "INHAM Exemption")) managed by an "in-house asset manager" or "INHAM" (within the meaning of Part IV of the INHAM exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of "control" in Section IV(h) of the INHAM Exemption) owns a 5% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 6.2, the terms "employee benefit plan," "governmental plan," and "separate account" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

## 7. Information as to Parent and Company.

### 7.1 Financial and Business Information.

Parent shall deliver to each Holder that is an Institutional Investor:

(a) **Annual Financial Statements.** As soon as available and in any event within 90 days after the close of each fiscal year of Parent and the Company, the consolidated balance sheets of the Parent and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income, of stockholders' equity and of cash flows for such fiscal year, in each case setting forth comparative figures for the preceding fiscal year, all in reasonable detail and accompanied by the opinion with respect to such consolidated financial statements of independent public accountants of recognized national standing selected by Parent, which opinion shall be unqualified and shall (i) state that such accountants audited such consolidated financial statements in accordance with generally accepted auditing standards, that such accountants believe that such audit provides a reasonable basis for their opinion, and that in their opinion such consolidated financial statements present fairly, in all material respects, the consolidated financial position of Parent and its consolidated Subsidiaries as at the end of such fiscal year and the consolidated results of their operations and cash flows for such fiscal year in conformity with generally accepted accounting principles, or (ii) contain such statements as are customarily included in unqualified reports of independent accountants in conformity with the recommendations and requirements of the American Institute of Certified Public Accountants (or any successor organization).

(b) **Quarterly Financial Statements.** As soon as available and in any event within 45 days after the close of each of the quarterly accounting periods in each fiscal year of Parent and the Company, the unaudited consolidated balance sheets of the Parent and its consolidated Subsidiaries as at the end of such quarterly period and the related unaudited consolidated statements of income and of cash flows for such quarterly period and/or for the fiscal year to date, and setting forth, in the case of such unaudited consolidated statements of income and of cash flows, comparative figures for the related periods in the prior fiscal year, and which shall be certified by a Senior Financial Officer, subject to changes resulting from normal year-end audit adjustments.

(c) **Officer's Compliance Certificates.** At the time of the delivery of the financial statements provided for in Sections 7.1(a) and (b), a certificate by a Senior Financial Officer to the effect that no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof and the actions Parent and the Company propose to take with respect thereto, which certificate shall set forth the calculations required to establish compliance with the provisions of Sections 10.6 and 10.11 through 10.13, inclusive, of this Agreement.

(d) **Notice of Default, Litigation, Material Adverse Effect.** Promptly, and in any event within three Business Days after any of Parent, the Company or any Subsidiary obtains knowledge thereof, notice of

(i) the occurrence of any event that constitutes a Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Parent and the Company propose to take with respect thereto; or

(ii) the commencement of, or any other material development concerning, any litigation, governmental or regulatory proceeding pending against the Parent, the Company, or any Subsidiary, or any other event if the same involves any reasonable possibility of having a Material Adverse Effect.

(e) **ERISA.** Promptly, and in any event within 10 days after Parent, the Company, any Subsidiary or any ERISA Affiliate knows of the occurrence of any of the following, Parent will deliver to each of the Holders a certificate on behalf of Parent by a Responsible Officer of the Parent or the Company setting forth the full details as to such occurrence and the action, if any, that Parent, the Company or such Subsidiary or such ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given to or filed with or

by Parent, the Company, the Subsidiary, the ERISA Affiliate, the PBGC, a Plan participant or the Plan administrator with respect thereto (i) that a Reportable Event has occurred with respect to any Plan; (ii) the institution of any steps by any Borrower, any ERISA Affiliate, the PBGC or any other person to terminate any Plan; (iii) the institution of any steps by Parent, the Company or any ERISA Affiliate to withdraw from any Plan; (iv) the institution of any steps by any of the Parent, the Company or any Subsidiary to withdraw from any Multiemployer Plan or Multiple Employer Plan, if such withdrawal could result in withdrawal liability (as described in Part 1 of Subtitle E of Title IV of ERISA) in excess of \$5,000,000; (v) a non-exempt "prohibited transaction" within the meaning of Section 406 of ERISA in connection with any Plan; (vi) that a Plan has an Unfunded Current Liability exceeding \$5,000,000; (vii) any material increase in the contingent liability of Parent, the Company or any Subsidiary with respect to any post-retirement welfare liability; or (viii) the taking of any action by, or the threatening of the taking of any action by, the Internal Revenue Service, the Department of Labor or the PBGC with respect to any of the foregoing.

(f) **Environmental Matters.** Promptly upon, and in any event within 10 Business Days after, Parent, the Company or any Subsidiary obtains knowledge thereof, notice of one or more of the following environmental matters: (i) any pending or threatened material Environmental Claim against the Parent, the Company or any of their Subsidiaries or any real property owned or operated by the Parent, the Company or any of their Subsidiaries; (ii) any condition or occurrence on or arising from any real property owned or operated by the Parent, the Company or any Subsidiary that (A) results in material noncompliance by Parent, the Company or any Subsidiary with any applicable Environmental Law or (B) would reasonably be expected to form the basis of a material Environmental Claim against Parent, the Company or any Subsidiary or any such real property; (iii) any condition or occurrence on any real property owned, leased or operated by Parent, the Company or any Subsidiary that could reasonably be expected to cause such real property to be subject to any material restrictions on the ownership, occupancy, use or transferability by any the Parent, the Company or any Subsidiary of such real property under any Environmental Law; and (iv) the taking of any material removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any real property owned, leased or operated by Parent, the Company or any Subsidiary as required by any Environmental Law or any governmental or other administrative agency. All such notices shall describe in reasonable detail the nature of the Environmental Claim, Parent's, the Company's or such Subsidiary's response thereto and, to the extent reasonably ascertainable, the potential exposure in dollars of Parent, the Company and their Subsidiaries with respect thereto.

(g) **SEC Reports and Registration Statements.** Promptly after transmission thereof or other filing with the SEC, copies of all registration statements and all annual, quarterly or current reports that the Parent, the Company or any Subsidiary is required to file with the SEC on Form 10-K, 10-Q or 8-K (or any successor forms).

(h) **Annual and Quarterly Reports, Proxy Statements and other Reports Delivered to Stockholders Generally.** Promptly after transmission thereof to its stockholders, copies of all annual, quarterly and other reports and all proxy statements that Parent furnishes to its stockholders generally.

(i) **Auditors' Internal Control Comment Letters, etc.** Promptly upon receipt thereof, a copy of each letter or memorandum commenting on internal accounting controls and/or accounting or financial reporting policies followed by Parent, the Company and/or any Subsidiary that is submitted to Parent or the Company by their independent accountants in connection with any annual or interim audit made by them of the books of Parent or any of its Subsidiaries.

(j) **Other Information.** Promptly, but in any event within 10 Business Days upon request therefor, such other information or documents (financial or otherwise) relating to the Parent, the Company or any Subsidiary as such Holders may reasonably request from time to time (including information necessary in order to permit compliance with the information requirements of Rule 144A under the Securities Act in connection with a resale of the Notes).

## 7.2 Books and Records Inspection.

Parent and the Company shall, and shall cause each Subsidiary to, keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets of Parent, the Company and such Subsidiaries in accordance with GAAP and shall permit the representatives of each Holder that is an Institutional Investor:

(a) No Default -- if no Default or Event of Default then exists, at the expense of such Holder and upon reasonable prior notice to Parent and the Company, to visit the principal executive office of Parent and the Company, to discuss the affairs, finances and accounts of Parent, the Company and its Subsidiaries with Parent's and the Company's officers, and (with the consent of Parent and the Company, which consent will not be unreasonably withheld) its independent public accountants, and (with the consent of Parent and the Company, which consent will not be unreasonably withheld) to visit the other offices and properties of Parent, the Company and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) Default -- if a Default or Event of Default then exists, at the expense of Parent and the Company to visit and inspect any of the offices or properties of Parent, the Company or any Subsidiary, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision Parent and the Company authorize said accountants to discuss the affairs, finances and accounts of Parent, the Company and its Subsidiaries), all at such times and as often as may be requested.

## 8. Prepayment of the Notes.

### 8.1 Optional Prepayments with Make-Whole Amount.

Subject to Section 13 hereof and the Company's compliance with the terms of the Senior Note Agreement, the 2004 Senior Note Agreement and the Credit Agreement, the Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes, in an amount not less than \$5,000,000 plus \$100,000 increments in the case of a partial prepayment, at 100% of the principal amount so prepaid, plus the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each Holder written notice of each optional prepayment under this Section 8.1 not less than 30 days and not more than 60 days prior to the date fixed for such prepayment. Each such notice shall specify such date, the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such Holder to be prepaid (determined in accordance with Section 8.2), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each Holder a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

### 8.2 Allocation of Partial Prepayments.

In the case of each partial prepayment of the Notes, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

### 8.3 Maturity; Surrender, Etc.

In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

### 8.4 Purchase of Notes.

The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes except upon the payment or prepayment of the Notes in accordance with the terms of this Agreement and the Notes. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of Notes pursuant to any provision of this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

### 8.5 Offer to Prepay Notes in the Event of a Change in Control.

(a) *Notice of Impending Change in Control.* The Company shall give to each Holder prompt written notice of any impending Change in Control for which it has received a written offer or notice.

(b) *Notice of Occurrence of Change in Control.* The Company will promptly after any Responsible Officer has knowledge of the occurrence of any Change in Control, give written notice of such Change in Control to each Holder. Such notice shall contain and constitute an offer to prepay the Notes as described in clause (c) and shall be accompanied by the certificate described in clause (f) hereof.

(c) *Offer to Prepay Notes.* The offer to prepay Notes contemplated by the foregoing clause (b) shall be an offer to prepay, in accordance with and subject to this Section 8.5, all, but not less than all, the Notes held by each Holder (in this case only, "Holder" in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such offer (the "Proposed Prepayment Date"). Such Proposed Prepayment Date shall be not less than 30 days and not more than 90 days after the date of such offer (if the Proposed Prepayment Date shall not be specified in such offer, the Proposed Prepayment Date shall be the 60<sup>th</sup> day after the date of such offer).

(d) *Rejection, Acceptance.* A Holder may accept the offer to prepay made pursuant to this Section 8.5 by causing a notice of such acceptance to be delivered to the Company within 60 days after receipt of the notice required pursuant to clause (b). A failure by a Holder to respond to an offer to prepay made pursuant to this Section 8.5 within such 60-day period shall be deemed to constitute an acceptance of such offer by such Holder.

(e) *Prepayment.* Prepayment of the Notes to be prepaid pursuant to this Section 8.5 shall be at 101% of the principal amount of such Notes, together with interest on such Notes accrued to the date of prepayment. The prepayment shall be made on the Proposed Prepayment Date subject to the prior prepayment in full of any notes under the Senior Note Agreement or the 2004 Senior Note Agreement electing to be prepaid pursuant to Section 8.5 of the Senior Note Agreement or Section 8.5 of the 2004 Senior Note Agreement.

(f) *Officer's Certificate.* Each offer to prepay the Notes pursuant to this Section 8.5 shall be accompanied by a certificate, executed by a Responsible Officer of the Company and dated the date of such offer, specifying: (i) the Proposed Prepayment Date; (ii) that such offer is made pursuant to this Section 8.5; (iii) the principal amount of each Note offered to be prepaid; (iv) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (v) that the conditions of this Section 8.5 have been fulfilled; and (vi) in reasonable detail, the nature and date of the Change in Control.

### 8.6 Make-Whole Amount.

The term "*Make-Whole Amount*" means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal, *provided* that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

"*Called Principal*" means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 8.1 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

"*Discounted Value*" means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (as converted to reflect the periodic basis on which interest on such Note is payable, if payable other than on a semi-annual basis) equal to the Reinvestment Yield with respect to such Called Principal.

"*Reinvestment Yield*" means, with respect to the Called Principal of any Note, 1.00% over the yield to maturity implied by (i) the yields reported, as of 10:00 A.M. (New York City time) on the Business Day next preceding the Settlement Date with respect to such Called Principal for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date on the display designated as "Page PX1" on the Bloomberg Financial Market Service or such other display as may replace Page PX1 on the Bloomberg Financial Market Service (or, if the Bloomberg Financial Market Service shall cease to report such yields or shall cease to be a customary source of information for calculating yield-maintenance amounts on privately placed notes, then such source as is then a customary source for such information), or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. Such implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between yields reported for various maturities. The Reinvestment Yield shall be rounded to that number of decimal places as appears in the interest rate set forth in the applicable Note.

*"Remaining Average Life"* means, with respect to any Called Principal, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

*"Remaining Scheduled Payments"* means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.1 or 12.1.

*"Settlement Date"* means, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 8.1 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

## 9. *Affirmative Covenants.*

Each of Parent and the Company covenants that so long as any of the Notes are outstanding:

### 9.1 *Compliance with Law.*

It will and will cause each of its Subsidiaries to comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, Environmental Laws, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### 9.2 *Insurance.*

It will and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated.

### 9.3 *Maintenance of Properties.*

It will and will cause each of its Subsidiaries to maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, *provided* that this Section shall not prevent Parent, the Company or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and Parent has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### 9.4 *Payment of Taxes and Claims.*

It will and will cause each of its Subsidiaries to file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien on properties or assets of Parent, the Company or any Subsidiary, *provided* that neither Parent nor the Company nor any Subsidiary need pay any such tax or assessment or claims if (i) the amount, applicability or validity thereof is contested by Parent, the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and Parent, the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of Parent, the Company or such Subsidiary or (ii) the nonpayment of all such taxes and assessments in the aggregate could not reasonably be expected to have a Material Adverse Effect.

### 9.5 *Corporate Existence, Etc.*

It will at all times preserve and keep in full force and effect its corporate existence. Subject to Sections 10.6, Parent and the Company will at all times preserve and keep in full force and effect the corporate existence of each of its Subsidiaries (unless merged into the Company or a Domestic Subsidiary to the extent permitted by Section 10.6) and all rights and franchises of Parent and the Company and its Subsidiaries unless, in the good faith judgment of Parent, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise could not, individually or in the aggregate, have a Material Adverse Effect.

### 9.6 *Fair Labor Standards Act.*

It will comply with, and cause each Subsidiary to comply with, the provisions of the Fair Labor Standards Act of 1938, as amended.

### 9.7 *USA Patriot Act.*

It will comply with the requirements of Executive Order No. 13224 (Sept. 23, 2001) and other similar requirements contained in the rules and regulations of OFAC and in legislation or other Executive Orders in respect thereof.

### 9.8 *No Integration.*

It has taken and will continue to take all necessary steps so that the issuance of the Notes have not and will not require registration under the Securities Act. Each of Parent and the Company covenants that no future offer and sale of debt securities of the Company of any class will be made if, as a result of the doctrine of "integration", there is a reasonable possibility that such offer and sale would result in the loss of the entitlement of the Notes to the exemption from the registration requirements of the Securities Act.

### 9.9 *Covenant to Secure Note Equally.*

If it or any Subsidiary shall create or assume any Lien upon any of its property or assets in respect of any Subordinated Debt, whether now owned or hereafter acquired, other than Liens permitted by the provisions of Section 10.3 (unless prior written consent to the creation or

assumption thereof shall have been obtained pursuant to Section 18.1), it will make or cause to be made effective provision whereby the Notes will be secured by such Lien equally and ratably with any and all other Subordinated Debt thereby secured so long as any such other Subordinated Debt shall be so secured.

#### 9.10 Guaranteed Obligations.

If, at any time, after the date hereof, it or any of its Subsidiaries incurs or permits to exist any Subordinated Debt of Parent or the Company Guaranteed or collateralized in any other manner by any other Person, except to the extent permitted by the provisions of Section 10.2, it will simultaneously cause such Person to execute and deliver to each Holder a guaranty agreement in form and substance reasonably satisfactory to such Holder guaranteeing payment of the principal amount of the Notes and any premium and interest thereon, which bears the same ratio to the total unpaid principal amount of the Notes as the amount of such other obligation which is guaranteed bears to the total unpaid principal amount of such other obligation, or if such other obligation is collateralized, to collateralize the Notes equally and ratably with such other obligation.

#### 10. Negative Covenants.

Each of the Parent and the Company covenants that so long as any of the Notes are outstanding:

##### 10.1 Transactions with Affiliates.

Except as set forth on Schedule 10.1, it will not, and will not permit any Subsidiary to, enter into directly or indirectly any transaction or Material group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Company or another Subsidiary), except in the ordinary course and pursuant to the reasonable requirements of Parent's, the Company's or such Subsidiary's business and upon fair and reasonable terms no less favorable to Parent, the Company or such Subsidiary than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate, except agreements and transactions with and payments to officers, directors and shareholders that are (i) approved by the directors or shareholders of Parent, the Company or a Subsidiary, as applicable, (ii) entered into in the ordinary course of business and (iii) not prohibited by any of the provisions of this Agreement. Nothing in this Section 10.1 shall be construed to prohibit any action otherwise permitted by Section 10.8.

##### 10.2 Guarantees.

It will not, and will not permit any Subsidiary to, Guarantee, endorse or otherwise be or become liable or contingently liable in connection with the obligations or Indebtedness of any other Person, including any Subsidiary, directly or indirectly, except (i) as an endorser of instruments for the payment of money deposited to its bank account for collection in the ordinary course of business; (ii) Parent and each Subsidiary may Guarantee the obligations of the Company under the Senior Note Agreement and the 2004 Senior Note Agreement and the notes issued pursuant thereto and (iii) without duplication, Parent and each Subsidiary may provide unsecured guaranties of any Indebtedness of the Company permitted to be incurred pursuant to Section 10.2 of the Senior Note Agreement and Section 10.2 of the 2004 Senior Note Agreement.

##### 10.3 Liens.

It will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any Lien upon any of its property, assets, income or profits, whether now owned or hereafter acquired, or pledge or encumber any assets, except (i) Liens in favor of the Collateral Agent for the benefit of the Secured Lender Group, (ii) Liens set forth on Schedule 10.3, (iii) Standard Permitted Liens, and (iv) Capital Leases, Synthetic Leases and Liens that are placed upon fixed or capital assets, acquired, constructed or improved by the Parent, the Company or any Subsidiary, provided that (1) the maximum principal amount of Indebtedness secured thereby does not exceed \$25,000,000 in the aggregate at any one time (using Capitalized Lease Obligations in lieu of principal amount, in the case of any Capital Leases and using the present value, based on the implicit interest rate, in lieu of principal amount, in the case of any Synthetic Lease), (2) such Liens and the Indebtedness secured thereby are incurred prior to or within 120 days after such acquisition or the completion of such construction or improvement, (3) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets; and (4) such Liens shall not apply to any other property or assets of the Parent, the Company or any Subsidiary.

##### 10.4 Plan Terminations; Minimum Funding, Etc.

Parent and the Company will not, and will not permit any ERISA Affiliate to, terminate any Plan or Plans so as to result in liability of Parent or the Company or any ERISA Affiliate to the PBGC in excess of, in the aggregate, the amount that is equal to the greater of (x) \$5,000,000, or (y) 5% of the Borrowers' Consolidated Net Worth as of the date of the then most recent financial statements furnished to Holders pursuant to the provisions of this Agreement, (ii) permit to exist one or more events or conditions that reasonably present a material risk of the termination by the PBGC of any Plan or Plans with respect to which Parent or the Company or any ERISA Affiliate would, in the event of such termination, incur liability to the PBGC in excess of such amount in the aggregate, or (iii) fail to comply with the minimum funding standards of ERISA and the Code with respect to any Plan.

##### 10.5 Compliance with Law.

It will not violate any law or regulation, order, writ, injunction or decree of any court or governmental instrumentality or breach any agreement to which Parent, Company or any Subsidiary is subject or in default thereunder, which violation or breach would have a Material Adverse Effect.

##### 10.6 Consolidations, Mergers, Acquisitions and Asset Sales, Etc.

Neither Parent nor the Company will, nor will permit any Subsidiary to, (1) wind up, liquidate or dissolve its affairs, (2) enter into any transaction of merger or consolidation, (3) make or otherwise effect any Acquisition, (4) sell or otherwise dispose of any of its property or assets outside the ordinary course of business, or otherwise make or otherwise effect any Asset Sale, or (5) agree to do any of the foregoing at any future time, except that the following shall be permitted:

(a) Certain Intercompany Mergers, etc. If no Default or Event of Default shall have occurred and be continuing or would result therefrom, each of the following shall be permitted: (i) the merger, consolidation or amalgamation of any Domestic Subsidiary of the Company with or into the Company, provided the Company is the surviving or continuing or resulting corporation; (ii) the merger, consolidation or amalgamation of any Domestic Subsidiary of the Company with or into any other Domestic Subsidiary of the Company; and (iii) the transfer or other disposition of any property by any Domestic Subsidiary to the Company or any other Domestic Subsidiary;

(b) **Acquisitions.** Parent, the Company or any Subsidiary may make any Acquisition that is a Permitted Acquisition, provided that all of the conditions contained in the definition of the term Permitted Acquisition are satisfied;

(c) **Permitted Dispositions.** If no Default or Event of Default shall have occurred and be continuing or would result therefrom, and no Material Adverse Effect has occurred or will result therefrom, Parent, the Company or any Subsidiary may consummate any Asset Sale, provided that (i) the consideration for such transaction represents fair value (as determined by any Responsible Officer of Parent); (ii) the cumulative aggregate value of the assets sold or transferred does not exceed 5% of the Parent's Consolidated Net Worth for all such transactions completed during any fiscal year, and (iii) in the case of any such transaction involving a sale of assets having a value in excess of \$10,000,000, at least five Business Days prior to the date of completion of such transaction Parent shall have delivered to each Holder an officer's certificate executed on behalf of Parent by a Responsible Officer of Parent, which certificate shall contain (x) a description of the proposed transaction, and (y) a certification that no Default, Event of Default or Material Adverse Effect has occurred and is continuing, or would result from consummation of such transaction;

(d) **Leases.** Parent, the Company or any Subsidiary may enter into Operating Leases of property or assets not constituting Acquisitions in the ordinary course of business, provided such leases are not otherwise in violation of this Agreement; and, provided that the total net consolidated rental payments and expenses under all such Operating Leases do not exceed \$30,000,000 in any of the Parent's fiscal years;

(e) **Capital Expenditures.** Parent, the Company and any Subsidiary shall be permitted to make any Consolidated Capital Expenditures, so long as no Default or Event of Default has occurred and is continuing or will occur as a result of such Consolidated Capital Expenditure; and

(f) **Permitted Investments.** Parent, the Company and the Subsidiaries shall be permitted to make and dispose of the Investments permitted pursuant to Section 10.7.

#### 10.7 Investments.

Parent and the Company will not, and will not permit any Subsidiary to, directly or indirectly make or commit to make any Investment, except:

(a) Parent, the Company or any of its Subsidiary may invest in cash and Cash Equivalents;

(b) any endorsement of a check or other medium of payment for deposit or collection, or any similar transaction in the normal course of business;

(c) Parent, the Company and any Subsidiary may acquire and hold receivables owing to them in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(d) Investments required by Parent, the Company or any Subsidiary (i) in exchange for any other investment held by Parent, the Company or any such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other investment, or (ii) as a result of a foreclosure by Parent, the Company or any Subsidiary with respect to any secured investment or other transfer of title with respect to any secured investment in default;

(e) loans and advances to employees for business-related travel expenses, moving expenses, costs of replacement homes, business machines or supplies, automobiles and other similar expenses, in each case incurred in the ordinary course of business;

(f) to the extent not permitted by the foregoing clauses, Investments existing as of the date hereof and described on Schedule 10.7 hereto;

(g) investments of Parent, the Company and any Subsidiary in Hedge Agreements;

(h) existing investments in any Subsidiaries and any additional Investments in any Subsidiary;

(i) intercompany loans and advances made by the Parent or the Company from time to time to each other and to any Subsidiary for working capital purposes in the ordinary course of business and for other purposes permitted under other provisions of this Agreement which would not be in violation of any of the terms or provision of this Agreement;

(j) the Acquisitions permitted by Section 10.6;

(k) Investments in joint ventures in an aggregate amount not to exceed \$15,000,000 in any of Parent's fiscal years; and

(l) notes held by a Borrower or a Subsidiary evidencing a portion of the purchase price of an asset disposed of pursuant to Section 10.6.

#### 10.8 Dividends.

In the case of Parent, upon the occurrence of and during the existence of a Default or an Event of Default, it will not declare or pay dividends or make any capital distributions.

#### 10.9 Stock.

In the case of Parent, it will not sell, convey, transfer, assign, pledge or otherwise encumber any of the stock of the Company or any other Subsidiary to any Person.

#### 10.10 [INTENTIONALLY NOT USED].

#### 10.11 Interest Coverage Ratio.

Parent and the Company will not at any time permit the Interest Coverage Ratio to be less than 2.00 to 1.00.

#### 10.12 Consolidated Net Worth.

Parent and the Company will not permit the Consolidated Net Worth as at the end of any fiscal quarter of Parent and the Company to be less than \$190,000,000 plus, commencing March 31, 2005 and as of the end of each fiscal quarter thereafter, 40% of cumulative Consolidated Net Income (determined as set forth below in this Section 10.12). For purposes hereof, cumulative Consolidated Net Income shall be determined as of the last day of each fiscal quarter of Parent and the Company and shall be determined based on Consolidated Net Income as of the last day of each fiscal quarter of Parent and the Company, from December 31, 2004 through the end of the fiscal quarter for which the calculation of

cumulative Consolidated Net Income is being made. For purposes of this Section, in no event shall cumulative Consolidated Net Income be less than zero.

#### 10.13 Total Funded Debt/EBITDA.

Parent and the Company will not at any time permit the Total Funded Debt to EBITDA Ratio to exceed 4.00 to 1.00.

#### 10.14 Environmental Compliance.

It will not cause or permit any change to be made in the present or intended use of any property owned, leased or operated by Parent, the Company or any Subsidiary which would (i) involve the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Material or the use of any such property as a landfill or other waste disposal site or for the storage of petroleum or petroleum based products (except in compliance with applicable Environmental Laws), (ii) violate any applicable Environmental Laws, or (iii) constitute non-compliance with any Environmental Permit.

#### 10.15 Changes in Business; Change in Fiscal Year.

Neither Parent, Company nor any Subsidiary will engage in any business if, as a result, the general nature of the business, taken on a consolidated basis, which would then be engaged in by Parent and Subsidiaries, would be substantially changed from the general nature of the business engaged in by Parent and its Subsidiaries on the date hereof. Neither Parent nor the Company will change its Fiscal Year.

### 11. Events of Default.

An "Event of Default" shall exist if any of the following conditions or events shall occur and be continuing:

- (a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise or defaults in the payment of any fees or (except as provided in clause (b) below) other amounts payable hereunder or under any other Related Document when the same becomes due and payable; or
- (b) the Company defaults in the payment of any interest on any Note for more than two Business Days after the same becomes due and payable; or
- (c) Parent or the Company defaults in the performance of or compliance with any term contained in Section 10; or
- (d) Parent or the Company defaults in the performance of or compliance with any term contained herein (other than those referred to in paragraphs (a), (b) and (c) of this Section 11) and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Company receiving written notice of such default from any Holder (any such written notice to be identified as a "notice of default" and to refer specifically to this paragraph (d) of Section 11); or
- (e) any representation or warranty made in writing by or on behalf of Parent, the Company or by any officer of Parent or the Company in this Agreement or in any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made; or
- (f) (i) Parent, the Company or any Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least \$10,000,000 beyond any period of grace provided with respect thereto, or (ii) Parent, the Company or any Subsidiary is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least \$10,000,000 or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Indebtedness has become, or has been declared (or one or more Persons are entitled to declare such Indebtedness to be), due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Indebtedness to convert such Indebtedness into equity interests), (x) Parent, the Company or any Subsidiary has become obligated to purchase or repay Indebtedness before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least \$10,000,000, or (y) one or more Persons have the right to require Parent, the Company or any Subsidiary so to purchase or repay such Indebtedness; or
- (g) any of Parent, the Company or any Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or
- (h) a court or governmental authority of competent jurisdiction enters an order appointing, without consent by Parent, the Company or any of its Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of Parent, the Company or any of its Subsidiaries, or any such petition shall be filed against Parent, the Company or any of its Subsidiaries and such petition shall not be dismissed within 60 days; or
- (i) a final judgment or judgments for the payment of money aggregating in excess of \$10,000,000 (other than any judgment for which it is fully insured as acknowledged by the insurance carrier) are rendered against one or more of Parent, the Company and its Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or
- (j) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified Parent or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate "amount of unfunded benefit liabilities" (within the meaning of section 4001(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, shall exceed \$1 million, (iv) Parent or any ERISA Affiliate



shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) Parent or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) Parent or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of Parent or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect.

As used in Section 11(i), the terms "*employee benefit plan*" and "*employee welfare benefit plan*" shall have the respective meanings assigned to such terms in section 3 of ERISA.

## 12. Remedies on Default, Etc.

### 12.1 Acceleration.

(a) If an Event of Default with respect to the Company described in paragraph (g) or (h) of Section 11 has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, any Holder or Holders of more than 25% in principal amount of the Notes at the time outstanding may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in paragraph (a) of Section 11 has occurred and is continuing, any Holder or Holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable under this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus (x) all accrued and unpaid interest thereon, (y) the Make-Whole Amount determined in respect of such principal amount and (z) all other fees and amounts payable hereunder or under any of the Related Documents, shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each Holder has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

### 12.2 Other Remedies.

If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the Holder at the time outstanding may proceed to protect and enforce the rights of such Holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

### 12.3 Rescission.

At any time after any Notes have been declared due and payable pursuant to clause (b) or (c) of Section 12.1, the Holders of not less than 51% in principal amount of the Notes then outstanding, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes and all fees and other amounts that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, fees and other amounts and (to the extent permitted by applicable law) any overdue interest in respect of the Notes, at the Default Rate, (b) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 18, and (c) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

### 12.4 No Waivers or Election of Remedies, Expenses, Etc.

No course of dealing and no delay on the part of any Holder in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such Holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or by any Note upon any Holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the Holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such Holder incurred in any enforcement or collection under this Section 12, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

## 13. Subordination.

(a) *Subordinated Debt.* Anything in this Agreement to the contrary notwithstanding, all amounts owing to the holders of the Notes under this Agreement and the Notes including without limitation, principal, Make-Whole Amount, if any, interest, commitment, usage, facility and similar fees (the "*Subordinated Debt*"), shall be subordinate and junior to the payment in cash of all Senior Debt (as defined in subsection (b) below) of the Company to the extent provided herein.

(b) *Senior Debt.* For all purposes of these subordination provisions the term "*Senior Debt*" shall mean and include all obligations (whether now outstanding or hereafter incurred), for the payment of which the Company is responsible or liable as obligor, guarantor or otherwise in respect of all payment obligations under (i) the Company's 7.35% Senior Secured Notes due June 28, 2007, originally issued in the aggregate principal amount of \$25,000,000 (and any notes issued in substitution therefor) and the Senior Note Agreement and any Refinancing Debt minus, in each case, any principal payments made thereon, (ii) the Company's 5.75% Senior Secured Notes due July 17, 2011, originally issued in the aggregate principal amount of \$75,000,000 (and any notes issued in substitution therefor) and the 2004 Senior Note Agreement and any Refinancing Debt minus, in each case, principal payments therein, (iii) the indebtedness of the Company to the Banks evidenced by the promissory notes issued pursuant to the Credit Agreement in an aggregate amount not to exceed \$300,000,000 and any Refinancing Debt minus, in each case, any permanent reductions of the Commitments thereunder, and (iv) any interest on any of the foregoing accruing at the legal rate after the commencement of any proceedings described in clause (d) below and any additional interest that would have accrued thereon but for the commencement of such proceedings, excluding in any event all indebtedness of the Company or any Subsidiary for borrowed money that is

expressly provided that such indebtedness is junior and subordinate to other indebtedness and obligations of the Company or any such Subsidiary.

(c) **Payment Default.** Upon the happening of any default in the payment of any principal, interest or premium on any Senior Debt (a "Senior Payment Default"), then, unless and until such default shall have been remedied in a manner satisfactory to the holders of the relevant Senior Debt in their sole discretion or waived in writing or shall have ceased to exist, no direct or indirect payment (in cash, property or securities (other than PIK Notes) or by setoff or otherwise) shall be made on account of the principal of or premium, if any, or interest on any Notes (excluding any PIK Notes), or as a sinking fund for the Notes or in respect of any redemption, retirement, purchase or other acquisition of any of the Notes.

(d) **Bankruptcy.** In the event of:

(i) any insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding relating to the Company, its creditors as such or its property,

(ii) any proceeding for the liquidation, dissolution or other winding-up of the Company, voluntary or involuntary, whether or not involving insolvency or bankruptcy proceedings,

(iii) any assignment by the Company for the benefit of creditors,

(iv) any other marshalling of the assets of the Company (clauses (i), (ii), (iii) or (iv) referred to collectively as "Bankruptcy Proceedings"), or

(v) any action to declare any Senior Debt due and payable,

all Senior Debt shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any holder of any Note on account of any Notes. Except as set forth in the proviso below, any payment or distribution, whether in cash, securities or other property, which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Notes shall be paid or delivered directly to the holders of Senior Debt *pari passu* until all Senior Debt (including any interest thereon accruing at the legal rate after the commencement of any such Bankruptcy Proceedings and any additional interest that would have accrued thereon but for the commencement of such Bankruptcy Proceedings, in each case, if the claims of the holders of such obligations for such interest are allowed in any such proceeding) shall have been paid in full; *provided, however*, the holder of the Notes shall be entitled to receive distributions of any kind or character in any Bankruptcy Proceeding to the extent any such distribution received is subordinated (by law or agreement) at least to the extent as provided in this Section 13.

(e) **Covenant Defaults Payment Blockage.** Upon the occurrence of a Senior Debt Default, no holder of the Notes shall accept payment (other than a PIK Note) during the period (a "Blockage Period") beginning on the date of receipt of a written notice (a "Default Subordination Notice" or "DSN") from the Required Lenders (as defined in the Credit Agreement) or Required Holders and ending on the earliest of (1) the date on which all such Senior Debt Defaults identified in the DSN have been cured or waived in writing, (2) 180 days after receipt of the DSN and (3) payment in full of all of the Senior Debt; *provided* (a) there shall be no more than three Blockage Periods during the term of the Notes, (b) during any 365-day period, the aggregate number of days for which Standstill Periods and Blockage Periods may be in effect shall not exceed 180 days, (c) no facts or circumstances constituting a Senior Debt Default existing on the date of such DSN may be used as a basis for any subsequent DSN and (d) any payment on the Notes not made during such period shall be payable immediately upon the termination of any Blockage Period.

(f) **Standstill.** If the holders of the Notes are not permitted to receive payments because of a Senior Debt Payment Default or a Blockage Period, the holders of the Notes will not take any action to declare the Notes due and payable, or pursue remedies to enforce payment thereof (excluding any claims for specific performance to pay interest on the Notes by the issuance of PIK Notes) until the earliest of (a) the Senior Debt Default giving rise to the Blockage Period has been cured or waived in writing, (b) repayment in full of all of the Senior Debt, (c) 90 days after a Senior Debt Payment Default, (d) the termination of the applicable Blockage Period, (e) an action to declare any Senior Debt due and payable or commencement of collection actions or to realize upon any material part of the collateral for any Senior Debt and (f) the occurrence of any Bankruptcy Proceedings. During any 365-day period, the aggregate number of days for which Blockage Periods may be in effect shall not exceed 180 days. Upon the termination of the Blockage Period, the holders of the Notes may exercise all rights or remedies they may have in law or equity. If the holders of the Notes have commenced any action which would be prohibited by this Section 13(f), prior to a Senior Debt Payment Default or receipt of a DSN, then, upon the occurrence of the Senior Debt Payment Default or receipt of the DSN, the holders of the Notes shall take no further action and shall discontinue, cease, delay or suspend (to the fullest extent practicable) all ongoing or pending actions of the type prohibited to the extent provided in this Section 13(f).

(g) **Payments in Trust.** If any payment or distribution of any character or any security, whether in cash, securities or other property, shall be received by any holder of the Notes in contravention of any of the terms hereof, such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior Debt at the time outstanding *pari passu* for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all such Senior Debt in full. In the event of the failure of any holder of any Notes to endorse or assign any such payment, distribution or security, each holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

(h) **No Impairment.** No present or future holder of any Senior Debt shall be prejudiced in the right to enforce subordination of the Notes by any act or failure to act on the part of the Company or any holder of a Note. Nothing contained herein shall impair, as between the Company and any holder of the Notes, the obligation of the Company to pay to such holder hereof the principal hereof and premium and interest thereon as and when the same shall become due and payable in accordance with the terms hereof, or prevent the holder of any Note from exercising all rights, powers and remedies otherwise permitted by applicable law or hereunder upon a Default or Event of Default hereunder, all subject to the rights of the holders of the Senior Debt to receive cash, securities or other property otherwise payable or deliverable to the holders of the Notes as set forth in this Section 13.

(i) **Subrogation.** Upon the payment in full of all Senior Debt in cash, the holders of the Notes shall be subrogated to all rights of the holders of Senior Debt to receive any further payment or distributions applicable to the Senior Debt until the Notes shall have been paid in full, and, for the purposes of such subrogation, no payment or distribution received by the holders of Senior Debt of cash, securities or other property to which the holders of the Notes would have been entitled except for these subordination provisions shall, as between the Company and its creditors other than the holders of Senior Debt, on the one hand, and the holders of the Notes, on the other, be deemed to be a payment or distribution by the Company to or on account of Senior Debt.

(j) **Third Party Beneficiaries.** The holders of the "Notes" (as defined in the Senior Note Agreement and the 2004 Senior Note Agreement) and the Lenders (as defined in the Credit Agreement) are intended third party beneficiaries of the provisions of this Section 13. The provisions

in clauses (a) through (i) above shall not be amended or modified and no term or provision hereof shall be waived without the express prior written consent of Required Lenders (as defined in the Credit Agreement) and Required Senior Noteholders.

(k) *Filing Claims.* Each holder of Notes shall duly and promptly take such action as is reasonably necessary to file appropriate claims or proofs of claim in any Bankruptcy Proceeding and to execute and deliver such other instruments and take such other actions as may be reasonably necessary to prove or realize upon such claims and to have the proceeds of such claims paid as provided in this Section 13. In the event any holder of Notes shall not have made any such filing on or prior to the date 10 days before the expiration of the time for such filing or shall not have timely executed or delivered any such other instruments and taken such other actions, each holder of Senior Debt, acting through an agent or otherwise, is hereby authorized, as the agent and attorney-in-fact for such holder of Notes for the specific and limited purpose set forth in this clause (b), but shall have no obligation to file such proof of claim for or on behalf of such holder of Notes, execute and deliver such other instruments for or on behalf of such holder of Notes and take such other action necessary under applicable law to collect (subject to the provisions of clause (g)) any amounts due in respect of such claim in such proceeding. Anything contained in this paragraph notwithstanding, the right to vote any claim or claims in respect of the Subordinated Debt in connection with any Bankruptcy Proceeding is exclusively reserved to the holders of the Notes.

(l) Any holder of Senior Debt may extend, renew, waive, modify or amend the terms of Senior Debt or any security therefor and release, sell or exchange such security and otherwise deal freely with the Company or any subsidiary or affiliate, all without notice to or consent of the holders of the Notes and without affecting the liabilities and obligations of the holders of the Notes pursuant to the provisions hereof.

#### 14. *Registration; Exchange; Substitution of Notes.*

##### 14.1 *Registration of Notes.*

The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each Holder, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and Holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any Holder that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered Holders.

##### 14.2 *Transfer and Exchange of Notes.*

Upon surrender of any Note at the principal executive office of the Company for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Note or his attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof), the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the Holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such Holder may request and shall be substantially in the form of Exhibit 1. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$100,000, *provided* that if necessary to enable the registration of transfer by a Holder of its entire holding of Notes, one Note may be in a denomination of less than \$100,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 6.2.

##### 14.3 *Replacement of Notes.*

Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (*provided* that if the Holder is, or is a nominee for, an original Purchaser or another Holder with a minimum net worth of at least \$50,000,000, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Company at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

#### 15. *Payments on Notes.*

##### 15.1 *Place of Payment.*

Subject to Section 15.2, payments of principal, Make-Whole Amount, if any, interest becoming due and payable on the Notes and all fees and other amounts payable hereunder or under any of the other Related Documents shall be made in New York, New York at the principal office of Bank of New York in such jurisdiction. The Company may at any time, by notice to each Holder, change the place of payment of the Notes and such other amounts so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

##### 15.2 *Home Office Payment.*

So long as you or your nominee shall be the Holder, and notwithstanding anything contained in Section 15.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, interest and all fees and other amounts payable hereunder or under any of the other Related Documents by the method and at the address specified for such purpose below your name in Schedule A, or by such other method or at such other address as you shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, you shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 15.1. Prior to any sale or other disposition of any Note held by you or your nominee

you will, at your election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 15.2 to any Institutional Investor that is the direct or indirect transferee of any Note purchased by you under this Agreement and that has made the same agreement relating to such Note as you have made in this Section 15.2.

## 16. Expenses, Etc.

### 16.1 Transaction Expenses.

Whether or not the transactions contemplated hereby are consummated, the Company will pay all costs and expenses (including reasonable attorneys' fees of a special counsel and, if reasonably required, local or other counsel) incurred by you or another Holder in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement or the Notes or any other Related Document (whether or not such amendment, waiver or consent becomes effective), including, without limitation: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement or the Notes or any other Related Document or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or the Notes or any other Related Document, or by reason of being a Holder, and (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of Parent, the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes and the Related Documents. The Company will pay, and will save you and each other Holder harmless from, all claims in respect of any fees, costs or expenses if any, of brokers and finders.

### 16.2 Survival.

The obligations of the Company under this Section 16 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or the Notes, and the termination of this Agreement.

## 17. Survival of Representations and Warranties; Entire Agreement.

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by you of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of you or any other Holder. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement and the Notes embody the entire agreement and understanding between you and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

## 18. Amendment and Waiver.

### 18.1 Requirements.

This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Section 1, 2, 3, 4, 5, 6 or 22 hereof, or any defined term (as it is used therein), will be effective as to you unless consented to by you in writing, and (b) no such amendment or waiver may, without the written consent of the Holder at the time outstanding affected thereby, (i) subject to the provisions of Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest or of the Make-Whole Amount on, the Notes, (ii) change the percentage of the principal amount of the Notes the Holders of which are required to consent to any such amendment or waiver, or (iii) amend any of Sections 8, 11(a), 11(b), 12, 18 or 21.

### 18.2 Solicitation of Holders.

(a) *Solicitation.* The Company will provide each Holder (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such Holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 18 to each Holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite Holders.

(b) *Payment.* The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any Holder as consideration for or as an inducement to the entering into by any Holder or any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each Holder then outstanding even if such Holder did not consent to such waiver or amendment.

### 18.3 Binding Effect, Etc.

Any amendment or waiver consented to as provided in this Section 18 applies equally to all Holders and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and the Holder nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any Holder. As used herein, the term "*this Agreement*" and references thereto shall mean this Agreement as it may from time to time be amended or supplemented. From and after the date of satisfaction of the conditions precedent set forth in [Section 3](#), all references in the Original Note Agreement or this Agreement or in any of the Related Documents (whether delivered pursuant to this Agreement or pursuant to the Original Note Agreement) to "*this Agreement*" or the "*Note Purchase Agreement*" and the words "*herein*", "*hereof*" and words of like import referring to the Original Note Agreement or this Agreement shall mean and be references to the Original Note Agreement as amended and restated in its entirety by this Agreement. This Agreement amends and restates the Original Note Agreement in its entirety and it is the intent of the parties hereto that nothing contained herein shall constitute a novation or an accord and satisfaction.

### 18.4 Notes held by Company, Etc.

Solely for the purpose of determining whether the Holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or the Notes, or have directed the taking of any action provided herein or in the Notes to be taken upon the direction of the Holders of a specified percentage of the aggregate

principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

#### 19. Notices.

All notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

- (i) if to you or your nominee, to you or it at the address specified for such communications in Schedule A, or at such other address as you or it shall have specified to the Company in writing,
- (ii) if to any other Holder of any Note, to such Holder at such address as such other Holder shall have specified to the Company in writing, or
- (iii) if to the Company, to the Company at its address set forth at the beginning hereof to the attention of John E. Flint, or at such other address as the Company shall have specified to each Holder in writing.

Notices under this Section 19 will be deemed given only when actually received.

#### 20. Reproduction of Documents.

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by you at the Closing (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to you, may be reproduced by you by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and you may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by you in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 20 shall not prohibit the Company or any other Holder from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

#### 21. Confidential Information.

For the purposes of this Section 21, "Confidential Information" means information delivered to you by or on behalf of Parent, the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by you as being confidential information of Parent, the Company or such Subsidiary, *provided* that such term does not include information that (a) was publicly known or otherwise known to you prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by you or any person acting on your behalf, (c) otherwise becomes known to you other than through disclosure by Parent, the Company or any Subsidiary or (d) constitutes financial statements delivered to you under Section 7.1 that are otherwise publicly available. You will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by you in good faith to protect confidential information of third parties delivered to you, *provided* that you may deliver or disclose Confidential Information to (i) your directors, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by your Notes), (ii) your financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 21, (iii) any other Holder, (iv) any Institutional Investor to which you sell or offer to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 21), (v) any Person from which you offer to purchase any security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 21), (vi) any federal or state regulatory authority having jurisdiction over you, (vii) the National Association of Insurance Commissioners or any similar organization, or any nationally recognized rating agency that requires access to information about your investment portfolio or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to you, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which you are a party or (z) if an Event of Default has occurred and is continuing, to the extent you may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under your Notes and this Agreement. In the event Prudential or any of the Prudential Affiliates are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands or similar process), in connection with any proceeding, to disclose any Confidential Information, they will, unless prohibited by law, rule or regulation, provide Parent with notice of any such request or requirement so that Parent may seek a protective order or other appropriate remedy. In the event such protective order or other remedy is not obtained and upon written request from Parent, Prudential or such Prudential Affiliate will use reasonable efforts to obtain assurances that confidential treatment will be accorded to such information; provided, however, that all legal fees and costs and any other expense incurred in connection with such efforts shall be paid by Parent. Each Holder, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 21 as though it were a party to this Agreement. On reasonable request by Parent or the Company in connection with the delivery to any Holder of information required to be delivered to such Holder under this Agreement or requested by such Holder (other than a holder that is a party to this Agreement or its nominee), such Holder will enter into an agreement with Parent or the Company, as the case may be, embodying the provisions of this Section 21.

#### 22. Substitution of Purchaser.

You shall have the right to substitute any Prudential Affiliate as the purchaser of the Notes that you have agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both you and such Prudential Affiliate, shall contain such Prudential Affiliate's agreement to be bound by this Agreement and shall contain a confirmation by such Prudential Affiliate of the accuracy with respect to it of the representations set forth in Section 6. Upon receipt of such notice, wherever the word "you" is used in this Agreement (other than in this Section 22), such word shall be deemed to refer to such Prudential Affiliate in lieu of you. In the event that such Prudential Affiliate is so substituted as a purchaser hereunder and such Prudential Affiliate thereafter transfers to you all of the Notes then held by such Prudential Affiliate, upon receipt by the Company of notice of such transfer, wherever the word "you" is used in this Agreement (other than in this Section 22), such word shall no longer be deemed to refer to such Prudential Affiliate, but shall refer to you, and you shall have all the rights of an original holder of the Notes under this Agreement.

#### 23. Miscellaneous.

##### 23.1 Successors and Assigns.



**GIBRALTAR STEEL CORPORATION OF NEW YORK**

By:     /S/      
Name: John E. Flint  
Title: Senior Vice President

The foregoing is hereby agreed to as of the date thereof.

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**

By:     /S/      
Vice President

**SCHEDULE A**

**INFORMATION RELATING TO PURCHASERS**

<u>Name and Address of Purchaser</u>	<u>Aggregate Principal Amount of Notes to be Purchased</u>	<u>Note Denomination(s)</u>
<b>THE PRUDENTIAL INSURANCE COMPANY OF AMERICA</b>	\$25,000,000	\$25,000,000

- (1) All payments by wire transfer of immediately available funds for credit to:

JPMorgan Chase Bank  
New York, New York

Each such wire transfer shall set forth the name of the Company, a reference to "8.98% Senior Subordinated Note due January 3, 2008, PPN 37476# AB 9", and the due date and application (as among principal, interest and Make-Whole Amount) of the payment being made.

- (2) Address for all notices relating to payments:

The Prudential Insurance Company of America  
c/o Investment Operations Group  
Gateway Center Two, 10<sup>th</sup> Floor  
100 Mulberry Street  
Newark, New Jersey 07102  
Attention: Manager, Billings and Collections  
Telecopier: 973.802.8055

- (3) Address for all communications and notices (including copies of all notices relating to payments):

The Prudential Insurance Company of Americas  
c/o Prudential Capital Group  
1114 Avenue of the Americas, 30<sup>th</sup> Floor  
New York, NY 10036  
Attention: Managing Director  
Telecopier: 212.626.2077

- (4) Recipient of telephonic prepayment notices:

Manager, Trade Management Group  
Telephone: 973.802.8107  
Telecopier: 800.224.2778

- (5) Tax Identification No.: 22-1211670

## DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

"Acquisition" means and includes (whether in one transaction or a series of transactions) (i) any acquisition on a going concern basis (whether by purchase, lease or otherwise) of any facility and/or business or business unit operated by any Person that is not a Subsidiary of Parent or the Company, and (ii) acquisitions of a majority of the outstanding equity or other similar interests in any such Person (whether by merger, stock purchase or otherwise).

"Affiliate" means with respect to a specified Person, any (a) Person who now or hereafter has Control of or is now or hereafter under common Control with, such Person or over whom or over which such Person now or hereafter has Control, (b) any Person who is now or hereafter related by blood, by adoption or by marriage to any such Person or now or hereafter resides in the same home as any Person referred to in clause (a) of this sentence, (c) any Person who is now or hereafter an officer of such Person or (d) any Person who is now or hereafter related by blood, by adoption or by marriage to any Person referred to in clause (c) of this sentence or now or hereafter resides in the same home as any such Person or over whom or over which any such Person now or hereafter has Control.

"Asset Sale" means the sale, transfer or other disposition (including by means of Sale and Lease-Back Transactions, and by means of mergers, consolidations, and liquidations of a corporation, partnership or limited liability company of the interests therein of Parent, the Company or any Subsidiary) by Parent, the Company or any Subsidiary to any Person of any of their respective assets, provided that the term Asset Sale specifically excludes (i) any sales, transfers or other dispositions of inventory, or obsolete or excess furniture, fixtures, equipment or other property, real or personal, tangible or intangible, in each case in the ordinary course of business, and (ii) any Event of Loss.

"Business Day" means any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

"Capital Lease" as applied to any Person means any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of that person.

"Capitalized Lease Obligations" means all obligations under Capital Leases of Parent, the Company or any Subsidiary in each case taken at the amount thereof accounted for as liabilities identified as "capital lease obligations" (or any similar words) on a consolidated balance sheet of Parent and its Subsidiaries prepared in accordance with GAAP.

"Cash Equivalents" means any of the following

- (i) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than one year from the date of acquisition;
- (ii) Dollar denominated time deposits, certificates of deposit and bankers' acceptances of (x) any lender under the Credit Agreement ("Lender") or (y) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank, an "Approved Bank"), in each case with maturities of not more than three months from the date of acquisition;
- (iii) commercial paper issued by any Lender or Approved Bank or by the parent company of any Lender or Approved Bank and commercial paper issued by, or guaranteed by, any industrial or financial company with a short-term commercial paper rating of at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's, or guaranteed by any industrial company with a long term unsecured debt rating of at least A or A2, or the equivalent of each thereof, from S&P or Moody's, as the case may be, and in each case maturing within 90 days after the date of acquisition;
- (iv) fully collateralized repurchase agreements entered into with any Lender or Approved Bank having a term of not more than 30 days and covering securities described in clause (i) above;
- (v) investments in money market funds substantially all the assets of which are comprised of securities of the types described in clauses (i) through (iv) above;
- (vi) investments in money market funds access to which is provided as part of "sweep" accounts maintained with a Lender or an Approved Bank;
- (vii) investments in industrial development revenue bonds that (A) "re-set" interest rates not less frequently than quarterly, (B) are entitled to the benefit of a remarketing arrangement with an established broker dealer, and (C) are supported by a direct pay letter of credit covering principal and accrued interest that is issued by an Approved Bank; and
- (viii) investments in pooled funds or investment accounts consisting of investments of the nature described in the foregoing clause (vii).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same may be amended from time to time, 42 U.S.C. Section 9601 et seq.

"Change of Control" means any Person or related Persons (other than members of the Kenneth Lipke family, their heirs or estates or trusts for the benefit of members of the Kenneth Lipke family) shall own 50% or more of outstanding capital stock of the Company or a sufficient number of the shares of the outstanding capital stock of the Company to elect a majority of the Company's board of directors.

"Claims" shall have the meaning set forth in the definition of "Environmental Claims."



"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"Collateral Agent" means KeyBank National Association, as Collateral Agent, under the Security Agreements on behalf of the Secured Lender Group, and any successor Collateral Agent.

"Company" means Gibraltar Steel Corporation of New York, a Delaware corporation, and its successors and permitted assigns.

"Confidential Information" is defined in Section 21.

"Consideration" means in connection with an Acquisition, the aggregate consideration paid, including borrowed funds, cash, the issuance of securities or notes, the assumption or incurring of liabilities (direct or contingent), the payment of consulting fees or fees for a covenant not to compete and any other consideration paid for the purchase.

"Consolidated" or "Parent on a Consolidated basis" means the consolidation of the accounts of Parent and its Subsidiaries in accordance with GAAP, including principles of consolidation, consistent with those applied in the preparation of Parent's Consolidated audited financial statements.

"Consolidated Capital Expenditures" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events amounts expended or capitalized under Capital Leases and Synthetic Leases but excluding any amount representing capitalized interest) by Parent, the Company and any Subsidiary during that period that, in conformity with GAAP, are or are required to be included in the property, plant or equipment reflected in the consolidated balance sheet of Parent and its Subsidiaries.

"Consolidated Depreciation and Amortization Expense" means, for any period, all depreciation and amortization expenses of the Parent and its Subsidiaries, all as determined for Parent and its Subsidiaries on a consolidated basis in accordance with GAAP.

"Consolidated EBIT" means, for any period, Consolidated Net Income for such period; plus (A) the sum of the amounts for such period included in determining such Consolidated Net Income of (i) Consolidated Interest Expense and (ii) Consolidated Income Tax Expense, provided that, notwithstanding anything to the contrary contained herein, the Parent's Consolidated EBIT for any Testing Period shall (x) include the appropriate financial items for any Person or business unit that has been acquired by Parent, the Company or any Subsidiary for any portion of such Testing Period prior to the date of acquisition on a pro forma basis (but excluding anticipated operating synergies), and (y) exclude the appropriate financial items for any Person or business unit that has been disposed of by Parent, the Company or any Subsidiary, for the portion of such Testing Period prior to the date of disposition, in the case of clauses (x) and (y), subject to the Required Holders' reasonable discretion and supporting documentation acceptable to the Required Holders.

"Consolidated EBITDA" means, for any period, Consolidated Net Income for such period; plus (A) the sum of the amounts for such period included in determining such Consolidated Net Income of (i) Consolidated Interest Expense, (ii) Consolidated Income Tax Expense, (iii) Consolidated Depreciation and Amortization Expense, and (iv) extraordinary and other non-recurring non-cash losses and charges; less (B) gains on sales of assets and other extraordinary gains and other non-recurring gains; all as determined for Parent and its Subsidiaries on a consolidated basis in accordance with GAAP; provided that, notwithstanding anything to the contrary contained herein, Parent's Consolidated EBITDA for any Testing Period shall (x) include the appropriate financial items for any Person or business unit that has been acquired by Parent, the Company or any Subsidiary for any portion of such Testing Period prior to the date of acquisition on a pro forma basis (but excluding anticipated operating synergies), and (y) exclude the appropriate financial items for any Person or business unit that has been disposed of by a Parent, the Company or any Subsidiary, for the portion of such Testing Period prior to the date of disposition, in the case of clauses (x) and (y), subject to Required Holders' reasonable discretion and supporting documentation acceptable to Required Holders.

"Consolidated Income Tax Expense" means for any period, all provisions for taxes based on the net income of Parent and its Subsidiaries (including, without limitation, any additions to such taxes, and any penalties and interest with respect thereto), all as determined for Parent and its Subsidiaries on a consolidated basis in accordance with GAAP.

"Consolidated Interest Expense" means, for any period, total interest expense (including that which is capitalized, that which is attributable to Capital Leases or Synthetic Leases and the pre-tax equivalent of dividends payable on Redeemable Stock) of Parent and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of Parent and its Subsidiaries including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Hedge Agreements.

"Consolidated Net Income" means for any period, the net income (or loss) of Parent and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

"Consolidated Net Rent Expense" means, for any period, the total amount of rent or similar obligations required to be paid during such period by Parent and its Subsidiaries in respect of Operating Leases, as determined on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

"Consolidated Net Worth" means at any time for the determination thereof all amounts that, in conformity with GAAP would be included under the caption "total stockholders' equity" (or any like caption) on a consolidated balance sheet of Parent and its Subsidiaries as at such date, provided that in no event shall Consolidated Net Worth include any amounts in respect of Redeemable Stock.

"Consolidated Total Funded Debt" means the sum (without duplication) of all Indebtedness of Parent and its Subsidiaries for borrowed money, all as determined on a consolidated basis.

"Control" means (i) the power to vote 5% or more of the outstanding shares of any class of stock of a Person which is a corporation, (ii) the beneficial ownership of 5% or more of the outstanding shares of any class of stock of a Person which is a corporation or (iii) the power to direct or cause the direction of the management and policies of a Person which is not a corporation, whether by ownership of any stock or other ownership interest, by agreement or otherwise, in each case by or on behalf of a single Person or group of Persons acting as a group for the purposes of filing Form 13-D with the Securities and Exchange Commission.

"Credit Agreement" means that certain Credit Agreement, dated as of even date herewith, among Parent, the Company, KeyBank National Association, as Administrative Agent, Swing Line Lender, Letter of Credit Issuer and Book Runner, each of the Lenders a party thereto and each of the other parties thereto, as it may be amended, modified, restated, extended or supplemented from time to time.

"Default" means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"Default Rate" means that rate of interest that is the greater of (i) 2% per annum above the rate of interest stated in clause (a) of the first paragraph of the Notes or (ii) 2% over the rate of interest publicly announced by Bank of New York in New York, New York as its "base" or "prime" rate.

"Domestic Subsidiary" means any Subsidiary organized under the laws of the United States of America, any State thereof, the District of Columbia, or any United States possession.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law or any permit issued under any such law (hereafter "Claims"), including, without limitation, (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the storage, treatment or Release (as defined in CERCLA) of any Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Law" means any applicable Federal, state, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy and rule of common law now or hereafter in effect and in each case as amended, and any binding and enforceable judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment issued to or rendered against Parent, the Company or any Subsidiary relating to the environment, employee health and safety or Hazardous Materials, including, without limitation, CERCLA; RCRA; the Federal Water Pollution Control Act, 33 U.S.C. Section 2601 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. Section 1801 et seq., and the Occupational Safety and Health Act 29 U.S.C. Section 651 et seq. (to the extent it regulates occupational exposure to Hazardous Materials); and any state and local or foreign counterparts or equivalents, in each case as amended from time to time.

"Environmental Permits" means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with ownership, lease, purchase, transfer, closure, use and/or operation of any property for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials or the sale, transfer or conveyance of any such property.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date hereof and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

"ERISA Affiliate" means each person (as defined in Section 3(9) of ERISA), which together with Parent, the Company or a Subsidiary, would be deemed to be a "single employer" (i) within the meaning of Section 414(b), (c), (m) or (o) of the Code or (ii) as a result of Parent, the Company or a Subsidiary being or having been a general partner of such person.

"Event of Default" is defined in Section 11.

"Event of Loss" means, with respect to any property, (i) the actual or constructive total loss of such property or the use thereof, resulting from destruction, damage beyond repair, or the rendition of such property permanently unfit for normal use from any casualty or similar occurrence whatsoever, (ii) the destruction or damage of a portion of such property from any casualty or similar occurrence whatsoever under circumstances in which such damage cannot reasonably be expected to be repaired, or such property cannot reasonably be expected to be restored to its condition immediately prior to such destruction or damage, within 90 days after the occurrence of such destruction or damage, or (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, any property.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"GAAP" means of the date of any determination, generally accepted accounting principles as promulgated by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants, consistently applied and maintained throughout the relevant periods and from period to period.

"Governmental Authority" means

- (a) the government of
  - (i) the United States of America or any State or other political subdivision thereof, or
  - (ii) any jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or
- (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

"Guarantee" means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

- (a) to purchase such indebtedness or obligation or any property constituting security therefor;
- (b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;

(c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or

(d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guarantee, the indebtedness or other obligations that are the subject of such Guarantee shall be assumed to be direct obligations of such obligor.

"Hazardous Materials" means (i) any petrochemical or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; and (ii) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous wastes," "restrictive hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar meaning and regulatory effect, under any applicable Environmental Law.

"Hedge Agreement" means (i) any interest rate swap agreement, any interest rate cap agreement, any interest rate collar agreement or other similar agreement or arrangement designed to protect against fluctuations in interest rates, and (ii) any currency swap agreement, forward currency purchase agreement or similar agreement or arrangement designed to protect against fluctuations in currency exchange rates.

"Holder" means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1.

"Indebtedness" of any Person means without duplication (i) all indebtedness of such Person for borrowed money; (ii) all bonds, notes, debentures and similar debt securities of such person; (iii) the deferred purchase price of capital assets or services that in accordance with GAAP would be shown on the liability side of the balance sheet of such Person; (iv) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder; (v) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances; (vi) all Indebtedness of a second Person secured by any Lien on any property owned by such first Person, whether or not such indebtedness has been assumed; (vii) all Capitalized Lease Obligations of such Person; (viii) the present value, determined on the basis of the implicit interest rate, of all basic rental obligations under all Synthetic Leases of such Person; (ix) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted, *i.e.*, take-or-pay and similar obligations; (x) all net obligations of such Person under Hedge Agreements; (xi) the full outstanding balance of trade receivables, notes or other instruments sold with full recourse (and the portion thereof subject to potential recourse, if sole with limited recourse), other than in any such case any thereof sold solely for purposes of collection of delinquent accounts; (xii) the stated value, or liquidation value if higher, of all Redeemable Stock of such Person; and (xiii) any Guarantees of such Person (without duplication under clause (vi)); provided, however that (x) neither trade payables nor other similar accrued expenses, in each case arising in the ordinary course of business, nor obligations in respect of insurance policies or performance or surety bonds that themselves are not guarantees of Indebtedness (nor drafts, acceptances or similar instruments evidencing the same nor obligations in respect of letters of credit supporting the payment of the same), shall constitute Indebtedness; and (y) the Indebtedness of any Person shall in any event include (without duplication) the Indebtedness of any other entity (including any general partnership in which such Person is a general partner) to the extent such Person is liable thereon as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide expressly that such Person is not liable thereon.

"Institutional Investor" means (a) any original purchaser of a Note, (b) any holder of a Note holding more than 5% of the aggregate principal amount of the Notes then outstanding, and (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any investment fund or similar vehicle, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form.

"Interest Coverage Ratio" shall mean, for any Testing Period, the ratio of (i) Consolidated EBIT to (ii) Consolidated Interest Expense, in each case on a consolidated basis for Parent and its Subsidiaries for the Testing Period.

"Investment" means (i) any direct or indirect purchase or other acquisition by Parent, the Company or any Subsidiary of any of the capital stock or other equity interest of any other Person, including any partnership or joint venture interest in such Person; or (ii) any loan or advance to, guarantee or assumption of debt or purchase or other acquisition of any other debt of, any Person, by Parent, the Company or any Subsidiary.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, security interest, lien, charge or encumbrance, or preference, priority or other security agreement or preferential arrangement in respect of any asset of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

"Make-Whole Amount" is defined in Section 8.6.

"Material" means material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of Parent and its Subsidiaries taken as a whole.

"Material Adverse Effect" means any or all of the following (i) any material adverse effect on the business, operations, property, assets, liabilities, financial or other condition or prospects of Parent, the Company or Parent and its Subsidiaries, taken as a whole; (ii) any material adverse effect on the ability of Parent or the Company to perform any of its obligations under any Related Document to which it is a party; (iii) any material adverse effect on the ability of the Parent and its Subsidiaries, taken as a whole, to pay their liabilities and obligations as they mature or become due; or (iv) any material adverse effect on the validity, effectiveness or enforceability, as against Parent or the Company, of any of the Related Documents to which it is a party.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which Parent, the Company or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued obligations to make contributions.

"Multiple Employer Plan" means an employee benefit plan, other than a Multiemployer Plan, to which Parent, the Company or any ERISA Affiliate, and one or more employers other than Parent, the Company or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Parent, the Company or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

"Notes" is defined in Section 1.

"OFAC" is defined in Section 5.22.

"Officer's Certificate" means a certificate of a Senior Financial Officer or of any other officer of Parent and/or the Company, as applicable, whose responsibilities extend to the subject matter of such certificate.

"Operating Lease" as applied to any Person shall mean any lease of any property (whether real, personal or mixed) by that person as lessee that, in conformity with GAAP, is not accounted for as a Capital Lease on the balance sheet of that person.

"Original Note Agreement" is defined in Section 1.

"Other Lists" is defined in Section 5.22.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA or any successor thereto.

"Permitted Acquisition" means and includes any Acquisition as to which all of the following conditions are satisfied:

- (i) such Acquisition involves a line or lines of business that will not substantially change the general nature of the business in which Parent, the Company and their Subsidiaries, considered as an entirety, are engaged on the date hereof;
- (ii) no Default or Event of Default shall exist prior to or immediately after giving effect to such Acquisition;
- (iii) Parent and its Subsidiaries would, after giving effect to such Acquisition on a pro forma basis, be in compliance with the financial covenants set forth in Sections 10.11 through 10.13.
- (iv) Parent and its Subsidiaries would, after giving effect to such Acquisition, on a pro forma basis, have Post-Acquisition Liquidity of no less than \$25,000,000; and
- (v) at least five Business Days prior to the completion of such Acquisition, Parent shall have delivered to Holders (A) in the case of any Acquisition in which the aggregate Consideration to be paid is in excess of \$5,000,000 (or in the case of any Acquisition in which the Consideration to be paid, together with the aggregate Consideration paid in connection with all other Permitted Acquisitions made during the same fiscal quarter as such Acquisition, is in excess of the aggregate amount of \$5,000,000), a certificate of a Responsible Officer of Parent demonstrating in reasonable detail, the computation of the financial covenants referred to in Sections 10.13 through 10.16 on a pro forma basis as of the most recently ended fiscal quarter, and (B) in the case of any Acquisition in which the aggregate Consideration is in excess of \$10,000,000, historical financial statements relating to the business or Person to be acquired, financial projections relating to Parent and its Subsidiaries after giving effect to such Acquisition and such other information as Holders may reasonably request.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated association, government or political subdivision or other entity, body, organization or group.

"PIK Notes" means a promissory note issued by the Company in an aggregate principal amount equal to the amount of accrued interest then due on the Notes.

"Plan" means any multiemployer or single-employer plan, as defined in Section 4001 of ERISA, that is maintained or contributed to by (or to which there is an obligation to contribute by) Parent, the Company, a Subsidiary or an ERISA Affiliate, and each such plan for the five year period immediately following the latest date on which Parent, the Company, a Subsidiary or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to such plan.

"Post-Acquisition Liquidity" shall mean the sum of Unutilized Total Commitment (as defined in the Credit Agreement) and any unencumbered cash balances of Parent and its Subsidiaries.

"Preferred Stock" means any class of capital stock of a corporation that is preferred over any other class of capital stock of such corporation as to the payment of dividends or the payment of any amount upon liquidation or dissolution of such corporation.

"Prohibited Transaction" means a transaction with respect to a Plan that is prohibited under Section 4975 of the Code or Section 406 of ERISA and not exempt from Section 4975 of the Code or Section 408 of ERISA.

"Property" or "Properties" means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

"Prudential" shall mean Prudential Investment Management, Inc.

"Prudential Affiliate" shall mean (i) any corporation or other entity controlling, controlled by, or under common control with, Prudential and (ii) any managed account or investment fund which is managed by Prudential or a Prudential Affiliate described in clause (i) of this definition. For purposes of this definition the terms "control", "controlling" and "controlled" shall mean the ownership, directly or through subsidiaries of a majority of a corporation's or other Person's voting stock or equivalent voting securities or interests.

"Purchaser" and "Purchasers" are defined in Section 1.

"RCRA" means the Resource Conservation and Recovery Act, as the same may be amended from time to time, 42 U.S.C. Section 6901 et seq.

"Redeemable Stock" means with respect to any Person any capital stock or similar equity interests of such person that: (i) is by its terms subject to mandatory redemption, in whole or in part, pursuant to a sinking fund, scheduled redemption or similar provisions, at any time prior to the maturity date of the Notes; or (ii) otherwise is required to be repurchased or retired on a scheduled date or dates, upon the occurrence of any event or circumstance, at the option of the holder or holders thereof, or otherwise, at any time prior to the maturity date of the Notes other than any such repurchase or retirement occasioned by a "change of control" or similar event.

"Refinancing Debt" shall mean any Indebtedness, the proceeds of which are applied, directly or indirectly, to refinance all or a portion of the Indebtedness under the Senior Note Agreement or the Credit Agreement, as the case may be.

**"Related Documents"** means this Agreement, any Note and any other document, certificate or other writing executed in connection with any of the foregoing.

**"Release"** means the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. section 9601, et seq.), and the regulations promulgated thereunder.

**"Reportable Event"** means an event described in Section 4043 of ERISA or the regulations thereunder with respect to a Plan, other than those events as to which the notice requirement is waived under subsections .22, .23, .25, .27, .28, .29, .30, .31, .32, .34, .35, .62, .63, .64, .65 or .67 of PBGC Regulation Section 4043.

**"Required Holders"** means, at any time, the Holders of at least 50% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by Parent, the Company or any Affiliates of either).

**"Required Senior Noteholders"** means, at any time, the holders of at least 50% in principal amount of the notes at the time outstanding under the Senior Note Agreement (exclusive of any such notes then owned by Parent, the Company or any Affiliate of either).

**"Responsible Officer"** means any Senior Financial Officer and any other officer of Parent and/or the Company, as the case may be, with responsibility for the administration of the relevant portion of this Agreement.

**"Sale and Lease-Back Transaction"** means any arrangement with any person providing for the leasing by Parent, the Company or any Subsidiary of any property (except for temporary leases for a term, including any renewal thereof, of not more than one year and except for leases between Parent or the Company and a Subsidiary or between Subsidiaries), which property has been or is to be sold or transferred by Parent, the Company or a Subsidiary.

**"SDN List"** is defined in Section 5.22.

**"Secured Lender Group"** means the Collateral Agent, any lender under the Credit Agreement, any "Holder" and the Senior Note Agreement and any "Holder" under the 2004 Senior Note Agreement.

**"Securities Act"** means the Securities Act of 1933, as amended from time to time.

**"Senior Debt Default"** means any Default other than a Senior Payment Default under any agreement evidencing any Senior Debt.

**"Senior Financial Officer"** means the chief financial officer, principal accounting officer, treasurer or comptroller of the Company.

**"Senior Note Agreement"** means the Amended and Restated Note Purchase Agreement, dated as of even date herewith, among Parent, the Company and the investors a party thereto, amending and restating the Note Purchase Agreement, dated as of July 3, 2002, among such parties, as it may be amended, modified, restated or supplemented from time to time.

**"Standard Permitted Liens"** means the following:

- (i) Liens for taxes not yet delinquent or Liens for taxes being contested in good faith and by appropriate proceedings for which adequate reserves in accordance with GAAP have been established;
- (ii) Liens in respect of property or assets imposed by law that were incurred in the ordinary course of business, such as carriers', warehousemen's, materialmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, that do not in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of Parent, the Company or any Subsidiary and do not secure any Indebtedness.
- (iii) Liens created by the Security Documents;
- (iv) Liens arising from judgments, decrees or attachments in circumstances not consisting an Event of Default under Section 11(i).
- (v) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; and Liens to secure the performance of tenders, statutory obligations, contract bids, government contracts, performance and return-of-money bonds and other similar obligations, incurred in the ordinary course of business (exclusive of obligations in respect of the payment for borrowed money), whether pursuant to statutory requirements, common law or consensual arrangements;
- (vi) Leases or subleases granted in the ordinary course of business to others not interfering in any material respect with the business of Parent, the Company or any Subsidiary and any interest or title of a lessor under any lease not in violation of this Agreement;
- (vii) easements, rights-of-way, zoning or other restrictions, charges, encumbrances, defects in title, prior rights of other Persons, and obligations contained in similar instruments, in each case that do not involve, and are not likely to involve at any future time, either individually or in the aggregate, (A) a substantial and prolonged interruption or disruption of the business activities of Parent, the Company and Subsidiaries, or (B) a Material Adverse Effect;
- (viii) Liens arising from the rights of lessors under leases (including financing statements regarding property subject to lease) permitted pursuant to this Agreement, provided that such Liens are only in respect of the property subject to, and secure only, the respective lease (and any other lease with the same or an affiliated lessor); and
- (ix) rights of consignors of goods, whether or not perfected by the filing of a financing statement under the UCC.

**"Subsidiary"** means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a "Subsidiary" is a reference to a Subsidiary of Parent.

"Subordinated Debt" means Indebtedness of Parent, the Company or any Subsidiary which is subordinated, in form and content satisfactory to the Required Holders, to any and all Indebtedness owing to any of the Holders.

"Synthetic Lease" means any lease (i) that is accounted for by the lessee as an Operating Lease, and (ii) under which the lessee is intended to be the "owner" of the leased property for Federal income tax purposes.

"Testing Period" means for any determination a single period consisting of the four consecutive fiscal quarters of Parent and its Subsidiaries then last ended (whether or not such quarters are all within the same fiscal year), except that if a particular provision of this Agreement indicates that a Testing Period shall be of a different specified duration, such Testing Period shall consist of the particular fiscal quarter or quarters then last ended that are so indicated in such provision.

"Total Funded Debt to EBITDA Ratio" means, for any Testing Period, the ratio of (i) Consolidated Total Funded Debt to (ii) Consolidated EBITDA, in each case on a consolidated basis for Parent and its Subsidiaries for such Testing Period.

"2004 Senior Note Agreement" means the Amended and Restated Note Purchase Agreement, dated as of even date herewith, among the Company, Parent and The Prudential Insurance Company of America and Pruco Life Insurance Company, amending and restating the Note Purchase Agreement, dated as of June 18, 2004, among such parties, as it may be amended, modified, restated or supplemented from time to time in accordance with its terms.

"Unfunded Current Liability" of any Plan shall mean the amount, if any, by which the actuarial present value of the accumulated plan benefits under the Plan as of the close of its most recent plan year exceeds the fair market value of the assets allocable thereto, each determined in accordance with Statement of Financial Accounting Standards No. 87, based upon the actuarial assumptions used by the Plan's actuary in the most recent annual valuation of the Plan.

EXHIBIT 1

[FORM OF NOTE]

PAYMENT AND THE TERMS HEREOF ARE SUBJECT TO THE TERMS OF THE SUBORDINATED NOTE PURCHASE AGREEMENT, DEFINED BELOW.

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE OFFERED OR SOLD IN VIOLATION OF SUCH ACT.

GIBRALTAR STEEL CORPORATION OF NEW YORK

8.98% SENIOR SUBORDINATED NOTE DUE JANUARY 3, 2008

No. [\_\_\_\_\_]   
 \$25,000,000

\_\_\_\_\_, \_\_\_\_   
 PPN[\_\_\_\_\_]

FOR VALUE RECEIVED, the undersigned, Gibraltar Steel Corporation of New York (herein called the "Company"), a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, or registered assigns, the principal sum of TWENTY FIVE MILLION DOLLARS on January 3, 2008, with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance thereof at the rate of 8.98% per annum from the date hereof, payable quarterly, on the 3<sup>rd</sup> day of January, April, July and October in each year, commencing with the January, April, July and October next succeeding the date hereof, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law on any overdue payment (including any overdue prepayment) of principal, any overdue payment of interest and any overdue payment of any Make-Whole Amount (as defined in the Note Purchase Agreement referred to below), payable quarterly as aforesaid (or, at the option of the registered holder hereof, on demand), at a rate per annum from time to time equal to the greater of (i) 8.98% or (ii) 2.0% over the rate of interest publicly announced by Bank of New York from time to time in New York, New York as its "base" or "prime" rate.

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at Bank of New York or at such other place as the holder of this Note shall have designated by written notice to the Company as provided in the Note Purchase Agreement referred to below.

This Note is one the Senior Subordinated Notes (herein called the "Notes") issued pursuant to that certain Subordinated Note Purchase Agreement, dated as of July 3, 2002 (as from time to time amended, modified, restated or supplemented, the "Note Purchase Agreement"), among Gibraltar Steel Corporation, the Company and the respective purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, (i) to have agreed to the confidentiality provisions set forth in Section 21 of the Note Purchase Agreement and (ii) to have made the representation set forth in Section 6.2 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

This Note is subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

**If an Event of Default, as defined in the Note Purchase Agreement, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.**

**This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.**

GIBRALTAR STEEL CORPORATION  
OF NEW YORK

By: \_\_\_\_\_  
Name:  
Title:

**GIBRALTAR STEEL CORPORATION  
OF NEW YORK**

**\$75,000,000**

**5.75% Senior Secured Notes due June 17, 2011**

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**AMENDED AND RESTATED  
NOTE PURCHASE AGREEMENT**

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**Dated as of April 1, 2005**

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EXHIBIT 1	Form of 5.75% Senior Note due June 17, 2011
EXHIBIT 2	Form of Notice of Issuance
EXHIBIT 4.5(a)	Form of Opinion of Special Counsel for the Company
EXHIBIT B-1	Form of Guaranty Agreement
EXHIBIT B-2	Form of Security Agreement

**GIBRALTAR STEEL CORPORATION**

**OF NEW YORK**

**3556 Lakeshore Road**

**Buffalo, New York 14219**

**5.75% Senior Secured Notes due June 17, 2011**

**as of April 1, 2005**

**TO EACH OF THE PURCHASERS LISTED IN  
THE ATTACHED SCHEDULE A:**

**Ladies and Gentlemen:**

Gibraltar Steel Corporation of New York, a New York corporation (the "Company"), and Gibraltar Industries, Inc. f/k/a Gibraltar Steel Corporation, a Delaware corporation ("Parent"), and you (sometimes referred to individually as a "Purchaser" and collectively as the "Purchasers") are parties to a certain Note Purchase Agreement, dated as of June 18, 2004 (as amended and in effect on the date hereof, the "Original Note Agreement"), pursuant to which Purchasers have purchased or agreed to purchase the "Notes" (as defined below). The Company, Parent and Purchasers have agreed to amend certain covenants and events of default set forth in the Original Note Agreement. As a convenience to the Company, Parent and Purchasers, the Company, Parent and Purchasers have agreed to effect such amendments by amending

and restating the Original Note Agreement in its entirety as hereinafter set forth, upon and subject to the terms and conditions hereof. This amendment and restatement is not intended to be, and shall not be deemed or construed as, a repayment or a novation of the indebtedness outstanding pursuant to the Original Note Agreement. The Company, Parent and Purchasers hereby agree that the Original Note Agreement is hereby amended and restated in its entirety to read as follows:

1. **Authorization of Notes.**

The Company has authorized the issue and sale of \$75,000,000 aggregate principal amount (as reduced by the amount of the Final Subsequent Notes if the purchase and sale thereof is cancelled pursuant to Section 2F(2), "*Maximum Amount*") of its 5.75% Senior Secured Notes due June 17, 2011 (the "*Notes*", such term to include any such notes issued in substitution therefor pursuant to Section 13 of this Agreement). Pursuant to the Original Note Agreements, Notes in the following principal amounts were issued on the following dates:

Principal Amount	Issuance Date
\$25,000,000	June 18, 2004
\$20,000,000	October 27, 2004
\$10,000,000	November 8, 2004
\$10,000,000	January 18, 2005
<hr/>	
\$65,000,000	
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The \$65,000,000 in aggregate principal amount of Notes issued by Company to Purchasers pursuant to the Original Note Agreement shall remain outstanding pursuant to this Agreement.

Pursuant to this Agreement Purchasers may issue and sell an additional \$10,000,000 aggregate principal amount of Notes. The Notes are and shall be substantially in the form set out in Exhibit 1, with such changes therefrom, if any, as may be approved by you and the Company.

2. **Sale and Purchase of Notes.**

2A. **Facility.** Subject to the terms and conditions hereof, Purchasers agree to purchase additional Notes pursuant to this Agreement (such additional Notes, the "*Final Subsequent Notes*") in an aggregate amount (i.e., \$10,000,000) such that the aggregate principal amount of Notes (including Final Subsequent Notes) outstanding will not exceed the Maximum Amount, and as to each Purchaser the aggregate principal amount specified opposite its name on Schedule A. Purchasers' agreements to purchase Notes under the Original Note Agreement and hereunder are collectively referred to herein as the "*Facility*".

2B. **Issuance Period.** Final Subsequent Notes may be issued and sold pursuant to this Agreement, on a pro rata basis as among Purchasers, during the period commencing on the date of this Agreement and ending on September 14, 2005 ("*Issuance Period*").

2C. **Notice of Issuance.** The Company will during the Issuance Period deliver a notice of issuance with respect to the Final Subsequent Notes (such request being the "*Notice of Issuance*"). The Notice of Issuance shall be delivered to Prudential by telecopier and shall (i) specify the use of proceeds of the Final Subsequent Note, (ii) specify the closing day for such Notes which shall be a Business Day during the Issuance Period not less than twenty (20) days and not more than thirty (30) days after the date of the Notice of Issuance, (iii) specify the number of the account and the name and address of the depository institution to which the purchase prices of such Notes are to be transferred on the Closing Day for such purchase and sale, (iv) certify that the representations and warranties contained in paragraph 5 are true and correct as of the date of the Notice of Issuance (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date) except to the extent of changes caused by the transactions herein contemplated and that there exists on the date of the Notice of Issuance no Event of Default or Default, and (v) be substantially in the form of Exhibit 2 attached hereto. The Notice of Issuance shall be in writing and shall be deemed made when received by Prudential.

2D. **Receipt of Notice of Issuance.** Upon receipt of the Notice of Issuance from the Company, Prudential shall provide a copy thereof to each of the Purchasers. Subject to the terms and conditions hereof, Company agrees to sell to each Purchaser, and each Purchaser agrees to purchase from the Company, on a pro rata basis, the Final Subsequent Notes on the Closing Day for such Notes.

2E(1) **Closing.** Not later than 11:30 A.M. (New York City local time) on the Closing Day for the Final Subsequent Notes, the Company will deliver to each Purchaser at the offices of King & Spalding, LLP, 1185 Avenue of the Americas, New York, New York 10036 (or at such other address as any Purchaser shall specify) the Final Subsequent Notes to be purchased by such Purchaser on such Closing Day in the form of one or more Notes in authorized denominations as such Purchaser may request for the Notes to be purchased on such Closing Day, dated the Closing Day and registered in such Purchaser's name (or in the name of its nominee), against payment of the purchase price thereof by transfer of immediately available funds for credit to the Company's account specified in the Notice of Issuance.

2E(2) **Rescheduled Closing.** If the Company fails to tender to any Purchaser the Final Subsequent Notes to be purchased by such Purchaser on the scheduled Closing Day for such Final Subsequent Notes as provided above in this Section 2E, or any of the conditions specified in Section 4 shall not have been fulfilled by the time required on such scheduled Closing Day, the Company shall, prior to 1:00 P.M., New York City local time, on such scheduled Closing Day notify such Purchaser in writing whether (x) such closing is to be rescheduled (such rescheduled date to be a Business Day during the Issuance Period not less than one (1) Business Day and not more than thirty (30) Business Days after such scheduled Closing Day (the "*Rescheduled Closing Day*")) and certify to Purchaser that the Company reasonably believes that it will be able to comply with the conditions set forth in Section 4 on such Rescheduled Closing Day (and, if applicable, that the Company will pay the applicable Delayed Delivery Fee in accordance with Section 2F(1)) or (y) such closing is to be canceled as provided in Section 2F(2). In the event that the Company shall fail to give such notice referred to in the preceding sentence, Purchaser may at its election, at any time after 1:00 P.M., New York City local time, on such scheduled Closing Day, notify the Company in writing that such closing is to be canceled as provided in paragraph 2F(2). The Company may elect to reschedule a closing with respect to the Final Subsequent Notes on more than one occasion so long as the closing occurs within the Issuance Period.

2F. **Fees Payable with respect to the Final Subsequent Notes.**

2F(1) **Delayed Delivery Fee.** If the closing of the purchase and sale of the Final Subsequent Notes is delayed for any reason (other than solely as a result of the failure of a Purchaser to timely pay the applicable purchase price if all conditions of such purchase have been timely satisfied) beyond the last day of the Issuance Period, the Company will pay to each Purchaser (in accordance with such Purchaser's pro rata share of such Notes) on the applicable Rescheduled Closing Day (if any) or Cancellation Day, the applicable Delayed Delivery Fee. In no case shall the applicable Delayed Delivery Fee be less than zero, and the applicable Delayed Delivery Fee will be recalculated relative to each delay of

the Closing Day for the Final Subsequent Notes. Nothing contained herein shall obligate any Purchaser to purchase any Final Subsequent Note on any day other than the Closing Day or Rescheduled Closing Day for such Notes, as the same may be rescheduled from time to time in compliance with paragraph 2E, or to allow any Rescheduled Closing Date to occur after the expiration of the Issuance Period.

2F(2) Cancellation Fee. If the Company fails to deliver to Prudential the Notice of Issuance during the Issuance Period or at any time notifies Prudential in writing that the Company is canceling the closing of the purchase and sale of the Final Subsequent Notes, or if Prudential notifies the Company in writing under the circumstances set forth in the penultimate sentence of paragraph 2(E)(2) that the closing of the purchase and sale of such Notes is to be canceled, or if the Facility is cancelled pursuant to Section 12.1 or if the closing of the purchase and sale of the Final Subsequent Notes is not consummated on or prior to the last day of the Issuance Period applicable thereto (the date of any such notification, any cancellation of the Facility pursuant to Section 12.1 or the last day of the Issuance Period, as the case may be, being the "Cancellation Date"), the Company will promptly pay to each Purchaser (in accordance with such Purchaser's pro rata portion of the Final Subsequent Notes) in immediately available funds the Cancellation Fee.

### 3. Conditions to Effectiveness of Agreement.

The effectiveness of this Agreement is subject to the fulfillment to each Purchaser's satisfaction, on or prior to the date of this Agreement, of the following conditions:

#### 3.1 Certain Documents.

Purchasers shall have received the following each dated the date of this Agreement unless otherwise indicated:

- (a) the Guaranty Agreements;
- (b) the Security Agreements; and
- (c) the Intercreditor Agreement.

#### 3.2 Representations and Warranties.

The representations and warranties of Parent, the Company and Subsidiaries in this Agreement or any other Related Document to which it is a party shall be correct on the date of this Agreement.

#### 3.3 Performance; No Default.

Each of Parent, the Company and each Subsidiary Guarantor shall have performed and complied with all agreements and conditions contained in this Agreement or any other Related Document to which it is a party required to be performed or complied with by it prior to or at the date of this Agreement and no Default or Event of Default shall have occurred and be continuing. Neither Parent nor the Company nor any Subsidiary shall have entered into any transaction since December 31, 2003 that would have been prohibited by Sections 10.1, 10.7 or 10.8 hereof had such Sections applied since such date.

#### 3.4 Certificates.

(a) Officer's Certificate. Parent and the Company shall have delivered to you an Officer's Certificate, dated as of the date hereof, certifying that the conditions specified in Sections 3.2, 3.3 and 3.8 have been fulfilled.

(b) Secretary's Certificate. Each of Parent, the Company and each Subsidiary Guarantor shall have delivered to you a certificate certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of each Related Document to which it is a party including without limitation its constituent documents.

(c) Good Standing Certificates. Each of Parent, the Company and each Subsidiary Guarantor shall have delivered good standing certificates for it, issued by the Secretary of State or other appropriate official of its jurisdiction of incorporation and each jurisdiction where the conduct of its business activities or ownership of its property necessitates qualification.

#### 3.5 Opinions of Counsel.

You shall have received opinions in form and substance satisfactory to you, dated as of the date hereof (a) from Lippes, Mathias, Wexler & Friedman LLP, counsel for the Company, covering the matters set forth in Exhibit 3.5(a) and covering such other matters incident to the transactions contemplated hereby as you or your counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to you) and (b) from King & Spalding, LLP, your special counsel in connection with such transactions, covering such matters incident to such transactions as you may reasonably request.

#### 3.6 Credit Agreement.

Each Purchaser has received a true, correct and complete copy of the Credit Agreement (including all Exhibits and Schedules thereto) and any other document executed in connection therewith and all amendments and waivers relating thereto. As of the date hereof, none of such documents and agreements shall have been amended or supplemented, nor shall have any of the provisions thereof have been waived except pursuant to a written agreement or instrument which has been consented to by each of the Holders in writing. Each of the Credit Agreement and each such other document has been duly executed and delivered by the parties thereto and is in full force and effect.

#### 3.7 Payment of Special Counsel Fees.

Without limiting the provisions of Section 15.1, the Company shall have paid on or before the date of this Agreement the reasonable fees, charges and disbursements of your special counsel referred to in Section 3.5 to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to the date of this Agreement.

#### 3.8 Changes in Corporate Structure.

Each of Parent and the Company shall not have changed its jurisdiction of incorporation or been a party to any merger or consolidation and shall not have succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

#### 3.9 Evidence of Perfection and Priority of Security Interests.

You shall have received copies of all filing receipts or acknowledgments issued by any governmental authority to evidence any filing or recordation necessary to perfect the Security Interests of Collateral Agent on behalf of the Secured Lender Group in the Collateral and evidence in form satisfactory to you that such Liens constitute valid and perfected Security Interests, and that there are no other Liens upon any Collateral except for Permitted Encumbrances.

#### 3.10 2002 Note Agreement; Subordinated Note Agreement.

On or prior to the date hereof, the 2002 Note Agreement and the Subordinated Note Agreement shall have been amended in a manner satisfactory to each Purchaser such that the covenants and events of default set forth therein are consistent with those set forth herein.

#### 3.11 Amendment Fee; Proceedings and Documents.

The Company shall have paid to each Purchaser (in accordance with its pro rata share of the Notes) an amendment fee in the amount of \$45,000 in the aggregate as to all Purchasers. All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to you and your special counsel, and you and your special counsel shall have received all such counterpart originals or certified or other copies of such documents as you or they may reasonably request.

#### 4. Conditions to Closing of issuance of final subsequent notes.

The obligation of any Purchaser to purchase and pay for the Final Subsequent Notes to be sold to Purchasers on the Closing Day for such Notes is subject to the fulfillment to such Purchaser's satisfaction, prior to or at such Closing Day, of the following conditions:

##### 4.1 Certain Documents.

Such Purchaser shall have received the following each dated such Closing Day unless otherwise indicated:

- (a) the Final Subsequent Notes to be purchased by such Purchaser on such Closing Day; and
- (b) on such Closing Day, reaffirmations of the Guaranty Agreements, in form and substance satisfactory to each Purchaser.

##### 4.2 Representations and Warranties.

The representations and warranties of Parent, the Company and Subsidiaries in this Agreement or any other Related Document to which it is a party shall be correct when made and on such Closing Day.

##### 4.3 Performance; No Default.

Each of Parent, the Company and each Subsidiary Guarantor shall have performed and complied with all agreements and conditions contained in this Agreement or any other Related Document to which it is a party required to be performed or complied with by it prior to or at the such Closing Day and after giving effect to the issue and sale of the Final Subsequent Notes on such Closing Day (and the application of the proceeds thereof as contemplated by Section 5.14) no Default or Event of Default shall have occurred and be continuing. Neither Parent nor the Company nor any Subsidiary shall have entered into any transaction since December 31, 2003 that would have been prohibited by Sections 10.1, 10.7 or 10.8 hereof had such Sections applied since such date.

##### 4.4 Certificatees.

(a) Officer's Certificate. Parent and the Company shall have delivered to you an Officer's Certificate, dated as of such Closing Day, certifying that the conditions specified in Sections 4.2, 4.3 and 4.9 have been fulfilled.

(b) Secretary's Certificate. On such Closing Day, each of Parent, the Company and each Subsidiary Guarantor shall have delivered to you a certificate certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of each Related Document to which it is a party including without limitation its constituent documents (and attaching copies of such constituent documents or, in the case of each such certificate delivered subsequent to the date of this Agreement, in lieu of attaching copies, certifying that there have been no changes to the constituent documents since the date of this Agreement).

(c) Good Standing Certificates. On such Closing Day, each of Parent, the Company and each Subsidiary Guarantor shall have delivered good standing certificates for it, issued by the Secretary of State or other appropriate official of its jurisdiction of incorporation and each jurisdiction where the conduct of its business activities or ownership of its property necessitates qualification.

##### 4.5 Opinions of Counsel.

On such Closing Day, you shall have received opinions in form and substance satisfactory to you, dated such Closing Day (a) from Lippes, Silverstein, Wexler & Friedman LLP, counsel for the Company, covering the matters set forth in Exhibit 3.5(a) and covering such other matters incident to the transactions contemplated hereby as you or your counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to you) and (b) from King & Spalding, LLP, your special counsel in connection with such transactions, covering such matters incident to such transactions as you may reasonably request.

##### 4.6 Purchase Permitted by Applicable Law, Etc.

On such Closing Day your purchase of Notes shall (i) be permitted by the laws and regulations of each jurisdiction to which you are subject, without recourse to provisions (such as Section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (ii) not violate any applicable law or regulation (including, without limitation, Regulation T or X of the Board of Governors of the Federal Reserve System) and (iii) not subject you to any tax, penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the date hereof. If requested by you, you shall have received an Officer's Certificate certifying as to such matters of fact as you may reasonably specify to enable you to determine whether such purchase is so permitted.

##### 4.7 Credit Agreement.

As of such Closing Day, none of the Credit Agreement (including all Exhibits and Schedules thereto) or any documents executed in connection therewith shall have been amended or supplemented, nor shall have any of the provisions thereof have been waived except pursuant

to a written agreement or instrument which has been consented to by each of the Holders in writing.

#### 4.8 Payment of Special Counsel Fees.

Without limiting the provisions of Section 15.1, the Company shall have paid on or before such Closing Day the reasonable fees, charges and disbursements of your special counsel referred to in Section 4.5 to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to such Closing Day.

#### 4.9 Changes in Corporate Structure.

Each of Parent and the Company shall not have changed its jurisdiction of incorporation or been a party to any merger or consolidation and shall not have succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

#### 4.10 Evidence of Perfection and Priority of Security Interests

You shall have received copies of all filing receipts or acknowledgments issued by any governmental authority to evidence any filing or recordation necessary to perfect the Security Interests of Collateral Agent on behalf of the Secured Lender Group in the Collateral and evidence in form satisfactory to you that such Liens constitute valid and perfected Security Interests, and that there are no other Liens upon any Collateral except for Permitted Encumbrances.

#### 4.11 Proceedings and Documents.

All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to you and your special counsel, and you and your special counsel shall have received all such counterpart originals or certified or other copies of such documents as you or they may reasonably request.

### 5. Representations and Warranties.

Each of Parent and the Company represents and warrants to you that:

#### 5.1. Organization; Power and Authority.

Each of Parent and the Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of Parent and the Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts, to execute and deliver each Related Document to which it is a party and to perform the provisions thereof.

#### 5.2. Authorization, Etc.

Each Related Document has been duly authorized by all necessary corporate action on the part of Parent, the Company and each Subsidiary Guarantor, and each Related Document constitutes a legal, valid and binding obligation of Parent, the Company and each Subsidiary Guarantor, as the case may be, enforceable against it in accordance with its terms.

#### 5.3. Disclosure.

Except as disclosed in Schedule 5.3, this Agreement, the documents, certificates or other writings delivered to you by or on behalf of the Company in connection with the transactions contemplated hereby and the financial statements listed in Schedule 5.5, taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as expressly described in Schedule 5.3, or in one of the documents, certificates or other writings identified therein, or in the financial statements listed in Schedule 5.5, since December 31, 2004, there has been no change in the financial condition, operations, business, properties or prospects of Parent, the Company or any Subsidiary except changes that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect. There is no fact known to Parent or the Company that could reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the other documents, certificates and other writings delivered to you by or on behalf of Parent or the Company specifically for use in connection with the transactions contemplated hereby.

#### 5.4. Organization and Ownership of Shares of Subsidiaries; Affiliate.

(a) Schedule 5.4 contains (except as noted therein) complete and correct lists (i) of Parent's Subsidiaries, showing, as to each Subsidiary, the correct name thereof, the jurisdiction of its organization, and the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by Parent and each other Subsidiary, (ii) of Parent's Affiliates, other than Subsidiaries, and (iii) of Parent's directors and senior officers of Parent and the Company.

(b) All of the outstanding shares of capital stock or similar equity interests of each Subsidiary shown in Schedule 5.4 as being owned by Parent and its Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by Parent or another Subsidiary free and clear of any Lien.

(c) Each Subsidiary identified in Schedule 5.4 is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact, to execute and deliver each Related Document to which it is a party and to perform the provisions thereof.

(d) No Subsidiary is a party to, or otherwise subject to any legal restriction or any agreement (other than this Agreement, the agreements listed on Schedule 5.4 and customary limitations imposed by corporate law statutes) restricting the ability of such Subsidiary to pay dividends out of profits or make any other similar distributions of profits to Parent or any of its Subsidiaries that owns outstanding shares of capital stock or similar equity interests of such Subsidiary.

**5.5. Financial Statements.**

Parent has delivered to each Purchaser copies of the Consolidated financial statements of Parent and its Subsidiaries listed on Schedule 5.5. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of Parent and its Subsidiaries as of the respective dates specified in such Schedule and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments).

**5.6. Compliance with Laws, Other Instruments, Etc.** The execution, delivery and performance by Parent, the Company or any Subsidiary Guarantor of any Related Document to which it is a party will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of Parent, the Company or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other agreement or instrument to which Parent, the Company or any Subsidiary is bound or by which Parent, the Company or any Subsidiary or any of their respective properties may be bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to Parent, the Company or any Subsidiary or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to Parent, the Company or any Subsidiary.

**5.7. Governmental Authorizations, Etc.**

No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by Parent, the Company or any Subsidiary Guarantor of any Related Document to which it is a party.

**5.8. Litigation; Observance of Agreements, Statutes and Orders.**

(a) There are no actions, suits or proceedings pending or, to the knowledge of Parent or the Company, threatened against Parent, the Company or any Subsidiary or any property of Parent, the Company or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b) Neither Parent nor the Company nor any Subsidiary is in default under any term of any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Laws) of any Governmental Authority, which default or violation, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.9. Taxes.**

Parent and its Subsidiaries have filed all tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which is not individually or in the aggregate Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which Parent or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. Neither Parent nor the Company knows of any basis for any tax or assessment that could reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of Parent and its Subsidiaries in respect of Federal, state or other taxes for all fiscal periods are adequate. The Federal income tax liabilities of Parent and its Subsidiaries have been determined by the Internal Revenue Service and paid for all fiscal years up to and including the fiscal year ended December 31, 2000.

**5.10. Title to Property; Leases.**

Parent and its Subsidiaries have good and sufficient title to their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 or purported to have been acquired by Parent or any Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the aggregate are Material are valid and subsisting and are in full force and effect in all material respects.

**5.11. Licenses, Permits, Etc.**

(a) Parent and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others;

(b) to the knowledge of Parent and the Company, no product of Parent or any of its Subsidiaries infringes in any material respect any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other Person; and

(c) to the knowledge of Parent and the Company, there is no Material violation by any Person of any right of Parent or any of its Subsidiaries with respect to any patent, copyright, service mark, trademark, trade name or other right owned or used by the Company or any of its Subsidiaries.

**5.12. Compliance with ERISA.**

(a) Parent, the Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect. Neither Parent, the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that could reasonably be expected to result in the incurrence of any such liability by Parent, the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of Parent, the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. The term "benefit liabilities" has the meaning specified in section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in section 3 of ERISA.

(c) Parent, the Company and their ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(d) The expected postretirement benefit obligation (determined as of the last day of Parent's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of Parent and its Subsidiaries is not Material.

(e) The execution and delivery of any Related Document will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by Parent and the Company in the first sentence of this Section 5.12(e) is made in reliance upon and subject to (i) the accuracy of your representation in Section 6.2 as to the sources of the funds used to pay the purchase price of the Notes to be purchased by you and (ii) the assumption, made solely for the purpose of making such representation, that Department of Labor Interpretive Bulletin 75-2 with respect to prohibited transactions remains valid in the circumstances of the transactions contemplated herein.

#### 5.13. Private Offering by the Company.

Neither Parent, the Company nor anyone acting on its behalf has offered the Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any person other than you and not more than 12 other Institutional Investors, each of which has been offered the Notes at a private sale for investment. Neither Parent nor the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of Section 5 of the Securities Act.

#### 5.14. Use of Proceeds; Margin Regulations.

The Company has and will apply the proceeds of the sale of the Notes for general corporate purposes. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute any of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock will constitute any portion of the value of such assets. As used in this Section, the terms "margin stock" and "purpose of buying or carrying" shall have the meanings assigned to them in said Regulation X.

#### 5.15. Existing Indebtedness; Future Liens.

(a) Except as described therein, Schedule 5.15 sets forth a complete and correct list of all outstanding Indebtedness of Parent and its Subsidiaries as of December 31, 2004, since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Indebtedness of Parent or its Subsidiaries. Neither Parent nor any Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of Parent or such Subsidiary and no event or condition exists with respect to any Indebtedness of Parent or any Subsidiary that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Except as disclosed in Schedule 5.15, neither Parent nor any Subsidiary of Parent has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien not permitted by Section 10.4.

#### 5.16. Foreign Assets Control Regulations, Etc.

Neither the sale of the Notes by the Company under the Original Note Agreement or hereunder nor its use of the proceeds thereof has or will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

#### 5.17. Status under Certain Statutes.

Neither Parent nor the Company nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, as amended, the Public Utility Holding Company Act of 1935, as amended, the Interstate Commerce Act, as amended, or the Federal Power Act, as amended.

#### 5.18. Environmental Matters.

(a) Neither Parent nor the Company nor any Subsidiary has knowledge of any claim or has received any notice of any claim, and no proceeding has been instituted raising any claim against Parent or the Company or any of its Subsidiaries or any of their respective real properties now or formerly owned, leased or operated by any of them or other assets, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.

(b) Neither Parent nor the Company nor any Subsidiary has knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.

(c) Neither Parent nor the Company nor any of its Subsidiaries has (i) stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them or (ii) disposed of any Hazardous Materials in a manner contrary to any Environmental Laws in the case of clause (i) and (ii) in any manner that could reasonably be expected to result in a Material Adverse Effect.



(d) All buildings on all real properties now owned, leased or operated by Parent or any of its Subsidiaries are in compliance with applicable Environmental Laws, except where failure to comply could not reasonably be expected to result in a Material Adverse Effect.

5.19. Fiscal Year.

The fiscal year of Parent and the Company is the calendar year ending December 31.

5.20. Default.

There does not exist any Default or Event of Default.

5.21. Securities.

Each outstanding share of stock, debenture, bond, note and other security of Parent, the Company and each Subsidiary has been validly issued in full compliance with each statute, regulation and other law, and, if a share of stock, is fully paid and nonassessable.

5.22. Inventory Locations.

Neither Parent, the Company nor any Subsidiaries has Inventory at any location in an aggregate in excess of \$1,000,000 value at cost, other than the locations set forth in Schedule 5.22 attached hereto and made a part hereof.

5.23. USA Patriot Act.

Neither Parent nor the Company nor any Subsidiary (i) is listed on the Specially Designated Nationals and Blocked Persons List (the "SDN List") maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC"), or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Order (such other lists are referred to herein, collectively, as the "Other Lists"; the SDN List and the Other Lists are referred to herein, collectively, as the "Lists"), (ii) nor is it a person who has been determined by competent authority to be subject to the prohibitions contained in Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Executive Orders in respect thereof, (iii) as of the date hereof, it is not controlled by, nor does it act for or on behalf of, any person on the Lists or any other person who has been determined by competent authority to be subject to the prohibitions contained in Executive Order No. 13224 (Sept. 23, 2001) or similar prohibitions contained in the rules and regulations of OFAC or any enabling legislation or other Executive Orders in respect thereof, and (iv) it is in material compliance with the requirements of Executive Order No. 13224 (Sept. 23, 2001) and other similar requirements contained in the rules and regulations of OFAC and in any enabling legislation or other Executive Orders in respect thereof.

5.24. Solvency.

As of each of the date hereof and the Closing Day for the Final Subsequent Notes and after giving the effect to the transactions contemplated hereunder and, as applicable, under the Credit Agreement, on each such date, and to any other Indebtedness being incurred on each such date in connection therewith (a) the amount of the "present fair salable value" of the assets of the Parent and the Company will, as of such date, exceed the amount of all "liabilities of the Parent and the Company, contingent or otherwise," as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the solvency of debtors, (b) the present fair salable value of the assets of the Parent and the Company will, as of each such date, be greater than the amount that will be required to pay the liability of the Parent and the Company on its debts as such debts become absolute and matured, (c) the Parent and the Company will not have, as of each such date, an unreasonably small amount of capital with which to conduct their business, and (d) the Parent and the Company will be able to pay its debts as they mature. For purposes of this Section 5.24, "debt" means "liability or a claim", and "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

5.25. Company and Subsidiary Guarantors.

The Company and the Subsidiary Guarantors are operated as part of one consolidated business entity and are directly dependent upon each other for and in connection with their respective business activities and their respective financial resources. Parent and the Subsidiary Guarantors have received and will receive a direct economic and financial benefit from the Indebtedness incurred under the Original Note Agreement and this Agreement by the Company, and the incurrence of such Indebtedness was and is in the best interests of Parent and each of the Subsidiary Guarantors.

6. Representations of each Purchaser.

6.1. Purchase for Investment.

You represent that you have purchased and will purchase the Notes for your own account or for one or more separate accounts maintained by you or for the account of one or more pension or trust funds and not with a view to the distribution thereof, provided that the disposition of your or their property shall at all times be within your or their control. You understand that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

6.2. Source of Funds.

You represent that at least one of the following statements is an accurate representation as to each source of funds (a "Source") used or to be used by you to pay the purchase price of the Notes purchased by you under the Original Note Agreement or to be purchased by you hereunder:

(a) the Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption ("PTE") 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the "NAIC Annual Statement")) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and

liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser's state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser's fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an "investment fund" (within the meaning of Part V of PTE 84-14 (the "QPAM Exemption")) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part V of the QPAM Exemption), no employee benefit plan's assets that are included in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Section V(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM (applying the definition of "control" in Section V(e) of the QPAM Exemption) owns a 5% or more interest in the Company and (i) the identity of such QPAM and (ii) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Company in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a "plan(s)" (within the meaning of Section IV of PTE 96-23 (the "INHAM Exemption")) managed by an "in-house asset manager" or "INHAM" (within the meaning of Part IV of the INHAM exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of "control" in Section IV(h) of the INHAM Exemption) owns a 5% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 6.2, the terms "employee benefit plan," "governmental plan," and "separate account" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

## 7. Information as to Parent and Company.

### 7.1. Financial and Business Information.

Parent shall deliver to each Holder that is an Institutional Investor:

(a) **Annual Financial Statements.** As soon as available and in any event within 90 days after the close of each fiscal year of Parent and the Company, the consolidated balance sheets of the Parent and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income, of stockholders' equity and of cash flows for such fiscal year, in each case setting forth comparative figures for the preceding fiscal year, all in reasonable detail and accompanied by the opinion with respect to such consolidated financial statements of independent public accountants of recognized national standing selected by Parent, which opinion shall be unqualified and shall (i) state that such accountants audited such consolidated financial statements in accordance with generally accepted auditing standards, that such accountants believe that such audit provides a reasonable basis for their opinion, and that in their opinion such consolidated financial statements present fairly, in all material respects, the consolidated financial position of Parent and its consolidated Subsidiaries as at the end of such fiscal year and the consolidated results of their operations and cash flows for such fiscal year in conformity with generally accepted accounting principles, or (ii) contain such statements as are customarily included in unqualified reports of independent accountants in conformity with the recommendations and requirements of the American Institute of Certified Public Accountants (or any successor organization).

(b) **Quarterly Financial Statements.** As soon as available and in any event within 45 days after the close of each of the quarterly accounting periods in each fiscal year of Parent and the Company, the unaudited consolidated balance sheets of the Parent and its consolidated Subsidiaries as at the end of such quarterly period and the related unaudited consolidated statements of income and of cash flows for such quarterly period and/or for the fiscal year to date, and setting forth, in the case of such unaudited consolidated statements of income and of cash flows, comparative figures for the related periods in the prior fiscal year, and which shall be certified by a Senior Financial Officer, subject to changes resulting from normal year-end audit adjustments.

(c) **Officer's Compliance Certificates.** At the time of the delivery of the financial statements provided for in Sections 7.1(a) and (b), a certificate by a Senior Financial Officer to the effect that no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof and the actions Parent and the Company propose to take with respect thereto, which certificate shall set forth the calculations required to establish compliance with the provisions of Sections 10.7 and 10.13 through 10.16, inclusive, of this Agreement.

(d) **Notice of Default, Litigation, Material Adverse Effect.** Promptly, and in any event within three Business Days after any of Parent, the Company or any Subsidiary obtains knowledge thereof, notice of

(i) the occurrence of any event that constitutes a Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Parent and the Company propose to take with respect thereto; or

(ii) the commencement of, or any other material development concerning, any litigation, governmental or regulatory proceeding pending against the Parent, the Company, or any Subsidiary, or any other event if the same involves any reasonable possibility of having a Material Adverse Effect.

(e) **ERISA.** Promptly, and in any event within 10 days after Parent, the Company, any Subsidiary or any ERISA Affiliate knows of the occurrence of any of the following, Parent will deliver to each of the Holders a certificate on behalf of Parent by a Responsible Officer of the Parent or the Company setting forth the full details as to such occurrence and the action, if any, that Parent, the Company or such Subsidiary or such ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given to or filed with or by Parent, the Company, the Subsidiary, the ERISA Affiliate, the PBGC, a Plan participant or the Plan administrator with respect thereto (i) that a Reportable Event has occurred with respect to any Plan; (ii) the institution of any steps by any Borrower, any ERISA Affiliate, the PBGC or any other person to terminate any Plan; (iii) the institution of any steps by Parent, the Company or any ERISA Affiliate to withdraw from any Plan; (iv) the institution of any steps by any of the Parent, the Company or any Subsidiary to withdraw from any Multiemployer Plan or Multiple Employer Plan, if such withdrawal could result in withdrawal liability (as described in Part 1 of Subtitle E of Title IV of ERISA) in excess of \$5,000,000; (v) a non-exempt "prohibited transaction" within the meaning of Section 406 of ERISA in connection with any Plan; (vi) that a Plan has an Unfunded Current Liability exceeding \$5,000,000; (vii) any material increase in the contingent liability of Parent, the Company or any Subsidiary with respect to any post-retirement welfare liability; or (viii) the taking of any action by, or the threatening of the taking of any action by, the Internal Revenue Service, the Department of Labor or the PBGC with respect to any of the foregoing.

(f) **Environmental Matters.** Promptly upon, and in any event within 10 Business Days after, Parent, the Company or any Subsidiary obtains knowledge thereof, notice of one or more of the following environmental matters: (i) any pending or threatened material Environmental Claim against the Parent, the Company or any of their Subsidiaries or any real property owned or operated by the Parent, the Company or any of their Subsidiaries; (ii) any condition or occurrence on or arising from any real property owned or operated by the Parent, the Company or any Subsidiary that (A) results in material noncompliance by Parent, the Company or any Subsidiary with any applicable Environmental Law or (B) would reasonably be expected to form the basis of a material Environmental Claim against Parent, the Company or any Subsidiary or any such real property; (iii) any condition or occurrence on any real property owned, leased or operated by Parent, the Company or any Subsidiary that could reasonably be expected to cause such real property to be subject to any material restrictions on the ownership, occupancy, use or transferability by any the Parent, the Company or any Subsidiary of such real property under any Environmental Law; and (iv) the taking of any material removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any real property owned, leased or operated by Parent, the Company or any Subsidiary as required by any Environmental Law or any governmental or other administrative agency. All such notices shall describe in reasonable detail the nature of the Environmental Claim, Parent's, the Company's or such Subsidiary's response thereto and, to the extent reasonably ascertainable, the potential exposure in dollars of Parent, the Company and their Subsidiaries with respect thereto.

(g) **SEC Reports and Registration Statements.** Promptly after transmission thereof or other filing with the SEC, copies of all registration statements and all annual, quarterly or current reports that the Parent, the Company or any Subsidiary is required to file with the SEC on Form 10-K, 10-Q or 8-K (or any successor forms).

(h) **Annual and Quarterly Reports, Proxy Statements and other Reports Delivered to Stockholders Generally.** Promptly after transmission thereof to its stockholders, copies of all annual, quarterly and other reports and all proxy statements that Parent furnishes to its stockholders generally.

(i) **Auditors' Internal Control Comment Letters, etc.** Promptly upon receipt thereof, a copy of each letter or memorandum commenting on internal accounting controls and/or accounting or financial reporting policies followed by Parent, the Company and/or any Subsidiary that is submitted to Parent or the Company by their independent accountants in connection with any annual or interim audit made by them of the books of Parent or any of its Subsidiaries.

(j) **Other Information.** Promptly, but in any event within 10 Business Days upon request thereof, such other information or documents (financial or otherwise) relating to the Parent, the Company or any Subsidiary as such Holders may reasonably request from time to time (including information necessary in order to permit compliance with the information requirements of Rule 144A under the Securities Act in connection with a resale of the Notes).

## 7.2. Books and Records Inspection.

Parent and the Company shall, and shall cause each Subsidiary to, keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets of Parent, the Company and such Subsidiaries in accordance with GAAP and shall permit the representatives of each Holder that is an Institutional Investor:

(a) **No Default** -- if no Default or Event of Default then exists, at the expense of such Holder and upon reasonable prior notice to Parent and the Company, to visit the principal executive office of Parent and the Company, to discuss the affairs, finances and accounts of Parent, the Company and its Subsidiaries with Parent's and the Company's officers, and (with the consent of Parent and the Company, which consent will not be unreasonably withheld) its independent public accountants, and (with the consent of Parent and the Company, which consent will not be unreasonably withheld) to visit the other offices and properties of Parent, the Company and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) **Default** -- if a Default or Event of Default then exists, at the expense of Parent and the Company to visit and inspect any of the offices or properties of Parent, the Company or any Subsidiary, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision Parent and the Company authorize said accountants to discuss the affairs, finances and accounts of Parent, the Company and its Subsidiaries), all at such times and as often as may be requested.

## 8. Prepayment of the Notes.

### 8.1. Optional Prepayments with Make-Whole Amount.

The Company may, at its option, upon notice as provided below, prepay at any time after the issuance and sale of the Final Subsequent Notes hereunder or the cancellation of the closing of the purchase and sale of the Final Subsequent Notes and the payment of the Cancellation Fee, all, or from time to time any part of, the Notes, in an amount not less than \$5,000,000 plus \$100,000 increments in the case of a partial prepayment, at 100% of the principal amount so prepaid, plus the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each Holder written notice of each optional prepayment under this Section 8.1 not less than 30 days and not more than 60 days prior to the date fixed for such prepayment. Each such notice shall specify such date, the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such Holder to be prepaid (determined in accordance with Section 8.2), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior

to such prepayment, the Company shall deliver to each Holder a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

#### 8.2. Allocation of Partial Prepayments.

In the case of each partial prepayment of the Notes, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

#### 8.3. Maturity; Surrender, Etc.

In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

#### 8.4. Purchase of Notes.

The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes except upon the payment or prepayment of the Notes in accordance with the terms of this Agreement and the Notes. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of Notes pursuant to any provision of this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

#### 8.5. Offer to Prepay Notes in the Event of a Change in Control.

- (a) **Notice of Impending Change in Control.** The Company shall give to each Holder prompt written notice of any impending Change in Control for which it has received a written offer or notice.
- (b) **Notice of Occurrence of Change in Control.** The Company will promptly after any Responsible Officer has knowledge of the occurrence of any Change in Control, give written notice of such Change in Control to each Holder. Such notice shall contain and constitute an offer to prepay the Notes as described in clause (c) and shall be accompanied by the certificate described in clause (f) hereof.
- (c) **Offer to Prepay Notes.** The offer to prepay Notes contemplated by the foregoing clause (b) shall be an offer to prepay, in accordance with and subject to this Section 8.5, all, but not less than all, the Notes held by each Holder (in this case only, "Holder" in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such offer (the "Proposed Prepayment Date"). Such Proposed Prepayment Date shall be not less than 30 days and not more than 90 days after the date of such offer (if the Proposed Prepayment Date shall not be specified in such offer, the Proposed Prepayment Date shall be the 60<sup>th</sup> day after the date of such offer).
- (d) **Rejection, Acceptance.** A Holder may accept the offer to prepay made pursuant to this Section 8.5 by causing a notice of such acceptance to be delivered to the Company within 60 days after receipt of the notice required pursuant to clause (b). A failure by a Holder to respond to an offer to prepay made pursuant to this Section 8.5 within such 60-day period shall be deemed to constitute an acceptance of such offer by such Holder.
- (e) **Prepayment.** Prepayment of the Notes to be prepaid pursuant to this Section 8.5 shall be at 101% of the principal amount of such Notes, together with interest on such Notes accrued to the date of prepayment. The prepayment shall be made on the Proposed Prepayment Date.
- (f) **Officer's Certificate.** Each offer to prepay the Notes pursuant to this Section 8.5 shall be accompanied by a certificate, executed by a Responsible Officer of the Company and dated the date of such offer, specifying: (i) the Proposed Prepayment Date; (ii) that such offer is made pursuant to this Section 8.5; (iii) the principal amount of each Note offered to be prepaid; (iv) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (v) that the conditions of this Section 8.5 have been fulfilled; and (vi) in reasonable detail, the nature and date of the Change in Control.

#### 8.6. Offer to Prepay Notes in the Event of a Receipt of certain Cash Proceeds of Events of Loss.

- (a) **Notice of Receipt of Cash Proceeds.** If during any fiscal year of Parent and the Company, Parent and its Subsidiaries have received cumulative cash proceeds during such fiscal year from one or more Events of Loss of more than 5% of Parent's Consolidated Net Worth and such proceeds are not used by Parent and its Subsidiaries to rebuild, repair or reconstruct the property destroyed or damaged, the Company shall promptly give written notice of such receipt to each Holder. Such notice shall contain and constitute an offer to prepay the Notes as described in clause (b) and shall be accompanied by the certificate described in clause (e) hereof.
- (b) **Offer to Prepay Notes.** The offer to prepay Notes contemplated by the foregoing clause (a) shall be an offer to prepay, in accordance with and subject to this Section 8.6, the Notes held by Holders (in this case only, "Holder" in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such offer and in an amount equal to Holders' Share of the cash proceeds received by Parent and its Subsidiaries (the "Proposed Prepayment Date"). Such Proposed Prepayment Date shall be not less than 30 days and not more than 90 days after the date of such offer (if the Proposed Prepayment Date shall not be specified in such offer, the Proposed Prepayment Date shall be the 60<sup>th</sup> day after the date of such offer).
- (c) **Rejection, Acceptance.** A Holder may accept the offer to prepay made pursuant to this Section 8.6 by causing a notice of such acceptance to be delivered to the Company within 60 days after receipt of the notice required pursuant to clause (a). A failure by a Holder to respond to an offer to prepay made pursuant to this Section 8.6 within such 60-day period shall be deemed to constitute an acceptance of such offer by such Holder.
- (d) **Prepayment.** Prepayment of the Notes to be prepaid pursuant to this Section 8.6 shall be accompanied by the Make-Whole Amount determined for the Proposed Prepayment Date with respect to the principal amount to be prepaid. The prepayment shall be made on the Proposed Prepayment Date.

(e) **Officer's Certificate.** Each offer to prepay the Notes pursuant to this Section 8.5 shall be accompanied by a certificate, executed by a Responsible Officer of the Company and dated the date of such offer, specifying: (i) the Proposed Prepayment Date; (ii) that such offer is made pursuant to this Section 8.6; (iii) the principal amount of each Note offered to be prepaid; (iv) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (v) a computation of the Make-Whole Amount due in connection with such prepayment and (vi) that the conditions of this Section 8.6 have been fulfilled.

#### 8.7. **Make-Whole Amount.**

The term "Make-Whole Amount" means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal, provided that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

"Called Principal" means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 8.1 or 8.6 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

"Discounted Value" means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (as converted to reflect the periodic basis on which interest on such Note is payable, if payable other than on a semi-annual basis) equal to the Reinvestment Yield with respect to such Called Principal.

"Reinvestment Yield" means, with respect to the Called Principal of any Note, 0.50% over the yield to maturity implied by (i) the yields reported, as of 10:00 A.M. (New York City time) on the Business Day next preceding the Settlement Date with respect to such Called Principal for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date on the display designated as "Page PX1" on the Bloomberg Financial Market Service or such other display as may replace Page PX1 on the Bloomberg Financial Market Service (or if the Bloomberg Financial Market Service shall cease to report such yields or shall cease to be a customary source of information for calculating yield-maintenance amounts on privately placed notes then such source as is then a customary source for such information) or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. Such implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between yields reported for various maturities. The Reinvestment Yield shall be rounded to that number of decimal places as appears in the interest rate set forth in the applicable Note.

"Remaining Average Life" means, with respect to any Called Principal, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

"Remaining Scheduled Payments" means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, provided that if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.1 or 12.1.

"Settlement Date" means, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 8.1 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

#### 9. **Affirmative Covenants.**

Each of Parent and the Company covenants that so long as any of the Notes are outstanding:

##### 9.1. **Compliance with Law.**

It will and will cause each of its Subsidiaries to comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, Environmental Laws, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

##### 9.2. **Insurance.**

(a) It will and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated.

(b) It will and will cause each of its Subsidiaries that is a Subsidiary Guarantor to, at all times keep their respective property that is subject to the Lien of any of the Security Documents insured in favor of the Collateral Agent, and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other insurance maintained by Parent, the Company or any such Subsidiary) (i) shall be endorsed to the Collateral Agent's satisfaction for the benefit of the Collateral Agent (including, without limitation, by naming the Collateral Agent as an additional loss payee (with respect to Collateral) or, to the extent permitted by applicable law, as an additional insured as its interests may appear), (ii) shall state that such insurance policies shall not be canceled, reduced or expired without 30 days' prior written notice thereof (or 10 days' prior written notice in the case of cancellation for the nonpayment of premiums) by the respective insurer to the Collateral Agent, (iii) shall provide that the respective insurers irrevocably waive any and all rights of subrogation with respect to the Secured Lender Group, (iv) shall in the case of any such certificates or endorsements in favor of the Collateral Agent, be delivered to or deposited with the Collateral Agent, and (v) shall provide that the interests of the Collateral Agent shall not be invalidated by an act or negligence of Parent, the Company or any Subsidiary or any person having an interest in any facility owned, leased or used

by Parent, the Company or any Subsidiary nor by occupancy or use of any facility owned, leased or used by Parent, the Company or any Subsidiary for purposes more hazardous than permitted by such policy nor by any foreclosure or other proceedings relating to any facility owned, leased or used by Parent, the Company or any Subsidiary. Parent shall deliver to the Collateral Agent contemporaneously with the expiration or replacement of any policy of insurance required to be maintained by this Agreement a certificate as to the new or renewal policy.

### 9.3. Maintenance of Properties.

It will and will cause each of its Subsidiaries to maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, provided that this Section shall not prevent Parent, the Company or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and Parent has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### 9.4. Payment of Taxes and Claims.

It will and will cause each of its Subsidiaries to file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien on properties or assets of Parent, the Company or any Subsidiary, provided that neither Parent nor the Company nor any Subsidiary need pay any such tax or assessment or claims if (i) the amount, applicability or validity thereof is contested by Parent, the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and Parent, the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of Parent, the Company or such Subsidiary or (ii) the nonpayment of all such taxes and assessments in the aggregate could not reasonably be expected to have a Material Adverse Effect.

### 9.5. Corporate Existence, Etc.

It will at all times preserve and keep in full force and effect its corporate existence. Subject to Section 10.7, Parent and the Company will at all times preserve and keep in full force and effect the corporate existence of each of its Subsidiaries (unless merged into the Company or a Domestic Subsidiary to the extent permitted by Section 10.7) and all rights and franchises of Parent and the Company and its Subsidiaries unless, in the good faith judgment of Parent, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise could not, individually or in the aggregate, have a Material Adverse Effect.

### 9.6. Fair Labor Standards Act.

It will comply with, and cause each Subsidiary to comply with, the provisions of the Fair Labor Standards Act of 1938, as amended.

### 9.7. USA Patriot Act.

It will comply with the requirements of Executive Order No. 13224 (Sept. 23, 2001) and other similar requirements contained in the rules and regulations of OFAC and in any enabling legislation or other Executive Orders in respect thereof.

### 9.8. Covenant to Secure Note Equally.

If it or any Subsidiary shall create or assume any Lien upon any of its property or assets, whether now owned or hereafter acquired, other than Liens permitted by the provisions of Section 10.4 (unless prior written consent to the creation or assumption thereof shall have been obtained pursuant to Section 17.1), it will make or cause to be made effective provision whereby the Notes will be secured by such Lien equally and ratably with any and all other Indebtedness thereby secured so long as any such other Indebtedness shall be so secured.

### 9.9. Guaranteed Obligations.

If, at any time, after the date hereof, it or any of its Subsidiaries incurs or permits to exist any Indebtedness of Parent or the Company or other obligation of Parent or the Company Guaranteed or collateralized in any other manner by any other Person, except to the extent permitted by the provisions of Section 10.3, it will simultaneously cause such Person to execute and deliver to each Holder a guaranty agreement in form and substance reasonably satisfactory to such Holder guaranteeing payment of the principal amount of the Notes and any premium and interest thereon, which bears the same ratio to the total unpaid principal amount of the Notes as the amount of such other obligation which is guaranteed bears to the total unpaid principal amount of such other obligation, or if such other obligation is collateralized, to collateralize the Notes equally and ratably with such other obligation.

**9.10. Most Favored Covenant Status.** If Parent, the Company or any Subsidiary Guarantor at any time after the date hereof, issues or guarantees any Indebtedness in an aggregate amount exceeding \$5,000,000 (to the extent, if any, that Parent, the Company or such Subsidiary Guarantor is permitted to do so under Section 10.2 or Section 10.3 hereof, as applicable) pursuant to a loan agreement, credit agreement, note purchase agreement, indenture, guaranty or other similar instrument, which agreement, indenture, guaranty or instrument includes affirmative or negative business or financial covenants (or any events of default or other type of restriction that would have the practical effect of any affirmative or negative business or financial covenant, including, without limitation, any "put" or mandatory prepayment of such indebtedness upon the occurrence of a "change of control") that are applicable to Parent, the Company or any Subsidiary Guarantor, other than those set forth herein, Parent shall promptly so notify Holders. If Required Holders shall so notify Parent in writing (after a determination has been made by Required Holders that any of the above-referenced documents or instruments contain any such provisions, that either individually or in the aggregate, are more favorable to the holders of such unsecured Indebtedness than any corresponding provisions set forth herein), this Agreement shall be deemed to be amended to incorporate some or all of such provisions, in the discretion of the Required Holders into this Agreement, as specified in the notice by Required Holders to Parent, all at the election of the Required Holders. Any such amendments shall be deemed effective as of the date of Parent's receipt of such notice from Required Holders, without requirement of any acknowledgment or acceptance by Parent or the Company; provided, however, that if Required Holders so request Purchaser and the Company shall join with Holders in the execution of such amendment to this Agreement as Required Holders deem appropriate in connection with any such notice.

**9.11. Senior Debt.** Parent and the Company will at all times ensure that (i) the claims of the Holders in respect of the Notes and the Guaranties or any of them will not be subordinate to, and will in all respects rank senior to the claims of every unsecured creditor of Parent, the Company or any Subsidiary, and (ii) any Indebtedness of Parent, the Company or any Subsidiary that is subordinated in any manner to the claims of any other creditor of such Person will be subordinated in like manner to such claims of Holders.

**9.12. No Integration.**

It has taken and will continue to take all necessary steps so that the issuance of the Notes have not and will not require registration under the Securities Act. Each of Parent and the Company covenants that no future offer and sale of debt securities of the Company of any class will be made if, as a result of the doctrine of "integration", there is a reasonable possibility that such offer and sale would result in the loss of the entitlement of the Notes to the exemption from the registration requirements of the Securities Act.

**9.13. Certain Subsidiaries to Join in Subsidiary Guaranty.**

(a) In the event that any time after the date hereof (x) Parent or the Company creates, holds, acquires or at any time has any Subsidiary (other than the Excluded Subsidiaries and other than a Foreign Subsidiary as to which Section 9.13(b) applies) that is not a party to the Subsidiary Guaranty, or (y) an Event of Default shall have occurred and be continuing and Parent or the Company has any Subsidiary that is not a party to the Subsidiary Guaranty, Parent and the Company will immediately, but in any event within 5 Business Days, notify the Holders in writing of such event, identifying the Subsidiary in question and referring specifically to the rights of Holders under this Section. Parent and the Company will, within 15 days following request therefor from Required Holders, cause such Subsidiary to deliver to Prudential in sufficient quantities for Holders a joinder supplement, reasonably satisfactory in form and substance to the Holders, duly executed by such Subsidiary, pursuant to which such Subsidiary joins in the Subsidiary Guaranty as a guarantor thereunder, and (ii) if such Subsidiary is a corporation, resolutions of the Board of Directors of such Subsidiary, certified by the Secretary or an Assistant Secretary of such Subsidiary as duly adopted and in full force and effect, authorizing the execution and delivery of such joinder supplement, or if such Subsidiary is not a corporation, such other evidence of the authority of such Subsidiary to execute such joinder supplement as Required Holders may reasonably request.

(b) Notwithstanding the foregoing or the provisions of Section 9.14 hereof, neither Parent nor the Company shall, unless an Event of Default shall have occurred and be continuing, be required to pledge (or cause to be pledged) more than 65% of the stock or other equity interests in any first tier Foreign Subsidiary, or any of the Stock or other equity interests in any other Foreign Subsidiary, or to cause a Foreign Subsidiary to join the Subsidiary Guaranty or to become a party to the Security Agreement or any other Security Document, if (i) to do so would subject such Parent or the Company to liability for additional United States income taxes by virtue of Section 956 of the Code in an amount Parent or the Company considers material, and (ii) Parent provides the Holders with documentation, including computations prepared by Parent's internal tax officer, its independent accountants or tax counsel, reasonably acceptable to Required Holders in support thereof.

**9.14. Additional Security; Further Assurances.**

(a) In the event that at any time after the date hereof,

(i) Parent, the Company or any Subsidiary acquires, or a Person that has become a Subsidiary owns or holds, an interest in assets, stock, securities or any other property or interest, located in the United States or arising out of business conducted in or from the United States, that is not at the time included in the Collateral and is not subject to a Permitted Lien securing Indebtedness, such Parent and the Company will notify Holders in writing of such event, identifying the property or interests in question and referring specifically to the rights of Holders under this Section; or

(ii) an Event of Default shall have occurred and be continuing and Parent, the Company or any Subsidiary at any time owns or holds an interest in any assets, stock, securities or any other property or interest, located within or outside of the United States or arising out of business conducted from any location within or outside the United States, that is not at the time included in the Collateral and is not subject to a Permitted Lien securing Indebtedness;

subject to Section 9.13(b) hereof, Parent or the Company will, or will cause such Subsidiary to, within 30 days, grant the Collateral Agent for the benefit of the Company Secured Lender Group security interests pursuant to an additional Security Agreement or joinder in any existing Security Agreement in such assets, interests or properties of Parent, the Company or any Subsidiary or any Subsidiary, subject to obtaining any required consents from third parties (including third party lessors and co-venturers) necessary to be obtained for the granting of a Lien on the interests or assets involved with the Parent hereby agreeing to use best efforts to obtain such consents).

(b) Each Security Agreement (i) shall be granted pursuant to documentation reasonably satisfactory in form and substance to Required Holders, and other supporting documentation requested by and reasonably satisfactory in form and substance to Required Holders; and (ii) shall constitute a valid and enforceable perfected Lien upon the interests or properties so included in the Collateral, superior to and prior to the rights of all third persons and subject to no other Liens except Permitted Liens or otherwise agreed by Required Holders at the time of perfection thereof. The Parent and the Company, at their sole cost and expense, will cause each additional Security Agreement or instruments related thereto to be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens created thereby required to be granted pursuant to the additional Security Agreement and will pay or cause to be paid in full all taxes, fees and other charges payable in connection therewith. Furthermore, Parent and the Company shall cause to be delivered to the Collateral Agent such opinions of local counsel, appraisals, title insurance, surveys, environmental assessments, consents of landlords, lien waivers from landlords or mortgagees and other related documents as may be reasonably requested by Required Holders in connection with the execution, delivery and recording of any additional Security Agreement, all of which documents shall be in form and substance reasonably satisfactory to the Collateral Agent.

(c) The Borrowers will, and will cause each of their Subsidiaries to, at the expense of the Borrowers, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such conveyances, financing statements, transfer endorsements, powers of attorney, certificates, and other assurances or instruments and take such further steps relating to the Collateral covered by any of the Security Documents as the Required Holders may reasonably require.

(d) From time to time, each of Parent, the Company and each Subsidiary Guarantor shall promptly take such action and execute and deliver to you such additional documents, instruments, certificates, and agreements as the Required Holders may reasonably request from time to time to effectuate the purposes of the Related Documents, including perfection by Collateral Agent on behalf of the Secured Lender Group of a security interest in any Commercial Tort Claim or Letter of Credit Right and maintenance of the perfected status of the Security Interest at all times.

**10. Negative Covenants.**

Each of the Parent and the Company covenants that so long as any of the Notes are outstanding:

**10.1. Transactions with Affiliates.**

Except as set forth on Schedule 10.1, it will not, and will not permit any Subsidiary to, enter into directly or indirectly any transaction or Material group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Company or another Subsidiary), except in the ordinary course and pursuant to the reasonable requirements of Parent's, the Company's or such Subsidiary's business and upon fair and reasonable terms no less favorable to Parent, the Company or such Subsidiary than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate, except agreements and transactions with and payments to officers, directors and shareholders that are (i) approved by the directors or shareholders of Parent, the Company or a Subsidiary, as applicable, (ii) entered into in the ordinary course of business and (iii) not prohibited by any of the provisions of this Agreement. Nothing in this Section 10.1 shall be construed to prohibit any action otherwise permitted by Section 10.10.

#### 10.2. Borrowed Money.

It will not, and will not permit any Subsidiary to, create, incur or suffer to exist or assume any Indebtedness for money borrowed, directly or indirectly, other than

- (i) Subordinated Debt;
- (ii) existing Indebtedness and accommodations for Indebtedness as set forth on Schedule 10.2 hereto;
- (iii) Indebtedness under this Agreement, the 2002 Note Agreement and the Subordinated Note Agreement;
- (iv) Indebtedness in connection with the Credit Agreement;
- (v) Capital Lease Obligations and other Indebtedness secured by Liens permitted pursuant to clause (vi) of Section 10.4;
- (vi) Indebtedness of the Parent, the Company and their Subsidiaries under Hedge Agreements;
- (vii) any Guaranties permitted by Section 10.3; and
- (viii) other unsecured Indebtedness of the Company to the extent not permitted by any of the foregoing clauses provided that at the time of any incurrence thereof after the date hereof, and after giving effect thereto, Parent and the Company would be in compliance with the financial covenants set forth in Sections 10.13 through 10.16 and no Default or Event of Default shall have occurred and be continuing or would result therefrom.

#### 10.3. Guarantees.

It will not, and will not permit any Subsidiary to, Guarantee, endorse or otherwise be or become liable or contingently liable in connection with the obligations or Indebtedness of any other Person, including any Subsidiary, directly or indirectly, except (i) as an endorser of instruments for the payment of money deposited to its bank account for collection in the ordinary course of business; (ii) Parent and each Subsidiary may Guarantee the obligations of the Company under the Notes and this Agreement and under the 2002 Note Agreement and the notes issued pursuant thereto, and (iii) without duplication, Parent and each Subsidiary may provide unsecured guaranties of any Indebtedness of the Company permitted to be incurred pursuant to Section 10.2.

#### 10.4. Liens.

It will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any Lien upon any of its property, assets, income or profits, whether now owned or hereafter acquired, or pledge or encumber any assets, except (i) Liens in favor of the Collateral Agent for the benefit of the Secured Lender Group, (ii) Liens set forth on Schedule 10.4, (iii) Standard Permitted Liens, and (iv) Capital Leases, Synthetic Leases and Liens that are placed upon fixed or capital assets, acquired, constructed or improved by the Parent, the Company or any Subsidiary, provided that (1) the maximum principal amount of Indebtedness secured thereby does not exceed \$25,000,000 in the aggregate at any one time (using Capitalized Lease Obligations in lieu of principal amount, in the case of any Capital Leases and using the present value, based on the implicit interest rate, in lieu of principal amount, in the case of any Synthetic Lease), (2) such Liens and the Indebtedness secured thereby are incurred prior to or within 120 days after such acquisition or the completion of such construction or improvement, (3) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets; and (4) such Liens shall not apply to any other property or assets of the Parent, the Company or any Subsidiary. Neither Parent nor the Company has entered, and so long as this Agreement is in effect it will not enter, into any covenant or agreement with any other Person that prohibits the granting or existence of a Lien in the personal or real property of Parent or the Company or any Subsidiary in favor of the Collateral Agent, as collateral agent and for the benefit of the Secured Lender Group.

#### 10.5. Plan Terminations; Minimum Funding, Etc.

Parent and the Company will not, and will not permit any ERISA Affiliate to, terminate any Plan or Plans so as to result in liability of Parent or the Company or any ERISA Affiliate to the PBGC in excess of, in the aggregate, the amount that is equal to the greater of (x) \$5,000,000, or (y) 5% of the Borrowers' Consolidated Net Worth as of the date of the then most recent financial statements furnished to Holders pursuant to the provisions of this Agreement, (ii) permit to exist one or more events or conditions that reasonably present a material risk of the termination by the PBGC of any Plan or Plans with respect to which Parent or the Company or any ERISA Affiliate would, in the event of such termination, incur liability to the PBGC in excess of such amount in the aggregate, or (iii) fail to comply with the minimum funding standards of ERISA and the Code with respect to any Plan.

#### 10.6. Compliance with Law.

It will not violate any law or regulation, order, writ, injunction or decree of any court or governmental instrumentality or breach any agreement to which Parent, Company or any Subsidiary is subject or in default thereunder, which violation or breach would have a Material Adverse Effect.

#### 10.7. Consolidations, Mergers, Acquisitions, and Asset Sales, Etc.

Neither Parent nor the Company will nor will permit any Subsidiary to, (1) wind up, liquidate or dissolve its affairs, (2) enter into any transaction of merger or consolidation, (3) make or otherwise effect any Acquisition, (4) sell or otherwise dispose of any of its property or assets outside the ordinary course of business, or otherwise make or otherwise effect any Asset Sale, or (5) agree to do any of the foregoing at any future time, except that the following shall be permitted:



(a) **Certain Intercompany Mergers, etc.** If no Default or Event of Default shall have occurred and be continuing or would result therefrom, each of the following shall be permitted: (i) the merger, consolidation or amalgamation of any Domestic Subsidiary of the Company with or into the Company, provided the Company is the surviving or continuing or resulting corporation; (ii) the merger, consolidation or amalgamation of any Domestic Subsidiary of the Company with or into any Subsidiary Guarantor, provided that the surviving or continuing or resulting corporation is a Subsidiary Guarantor; and (iii) the transfer or other disposition of any property by any Subsidiary Guarantor to the Company or any other Subsidiary Guarantor;

(b) **Acquisitions.** Parent, the Company or any Subsidiary Guarantor may make any Acquisition that is a Permitted Acquisition, provided that all of the conditions contained in the definition of the term Permitted Acquisition are satisfied;

(c) **Permitted Dispositions.** If no Default or Event of Default shall have occurred and be continuing or would result therefrom, and no Material Adverse Effect has occurred or will result therefrom, Parent, the Company or any Subsidiary may consummate any Asset Sale, provided that (i) the consideration for such transaction represents fair value (as determined by any Responsible Officer of Parent); (ii) the cumulative aggregate value of the assets sold or transferred does not exceed 5% of the Parent's Consolidated Net Worth for all such transactions completed during any fiscal year; and (iii) in the case of any such transaction involving a sale of assets having a value in excess of \$10,000,000, at least five Business Days prior to the date of completion of such transaction Parent shall have delivered to each Holder an officer's certificate executed on behalf of Parent by a Responsible Officer of Parent, which certificate shall contain (x) a description of the proposed transaction, and (y) a certification that no Default, Event of Default or Material Adverse Effect has occurred and is continuing, or would result from consummation of such transaction;

(d) **Leases.** Parent, the Company or any Subsidiary may enter into Operating Leases of property or assets not constituting Acquisitions in the ordinary course of business, provided such leases are not otherwise in violation of this Agreement; and, provided that the total net consolidated rental payments and expenses under all such Operating Leases do not exceed \$30,000,000 in any of the Parent's fiscal years;

(e) **Capital Expenditures.** Parent, the Company and any Subsidiary shall be permitted to make any Consolidated Capital Expenditures, so long as no Default or Event of Default has occurred and is continuing or will occur as a result of such Consolidated Capital Expenditure; and

(f) **Permitted Investments.** Parent, the Company and the Subsidiaries shall be permitted to make and dispose of the Investments permitted pursuant to Section 10.8.

10.8. **Investments.** Parent and the Company will not, and will not permit any Subsidiary to, directly or indirectly make or commit to make any Investment, except:

(a) Parent, the Company or any of its Subsidiary may invest in cash and Cash Equivalents;

(b) any endorsement of a check or other medium of payment for deposit or collection, or any similar transaction in the normal course of business;

(c) Parent, the Company and any Subsidiary may acquire and hold receivables owing to them in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(d) Investments required by Parent, the Company or any Subsidiary (i) in exchange for any other investment held by any Parent, the Company or any such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other investment, or (ii) as a result of a foreclosure by Parent, the Company or any Subsidiary with respect to any secured investment or other transfer of title with respect to any secured investment in default;

(e) loans and advances to employees for business-related travel expenses, moving expenses, costs of replacement homes, business machines or supplies, automobiles and other similar expenses, in each case incurred in the ordinary course of business;

(f) to the extent not permitted by the foregoing clauses, Investments existing as of the date hereof and described on Schedule 10.8 hereto;

(g) investments of Parent, the Company and any Subsidiary in Hedge Agreements;

(h) existing investments in any Subsidiaries and any additional Investments in any Subsidiary Guarantor;

(i) intercompany loans and advances made by the Parent or the Company from time to time to each other or to any Subsidiary for working capital purposes in the ordinary course of business and for other purposes permitted under other provisions of this Agreement which would not be in violation of any of the terms or provision of this Agreement;

(j) the Acquisitions permitted by Section 10.7;

(k) Investments in joint ventures in an aggregate amount not to exceed \$15,000,000 in any of Parent's fiscal years; and

(l) notes held by a Borrower or a Subsidiary evidencing a portion of the purchase price of an asset disposed of pursuant to Section 10.7.

10.9. **Subsidiaries.**

It will not acquire, organize or cause to exist any Subsidiaries except if Parent, the Company and such Subsidiary have complied with the requirements of Section 9.13.

10.10. **Dividends.**

In the case of Parent, upon the occurrence of and during the existence of a Default or an Event of Default, it will not declare or pay dividends or make any capital distributions.

10.11. **Stock.**

In the case of Parent, it will not sell, convey, transfer, assign, pledge or otherwise encumber any of the stock of the Company or any other Subsidiary to any Person.

**10.12. [Intentionally Not Used]**

**10.13. Interest Coverage Ratio.**

Parent and the Company will not at any time permit the Interest Coverage Ratio to be less than 3.00 to 1.00.

**10.14. Consolidated Net Worth.**

Parent and the Company will not permit the Consolidated Net Worth as of the end of any fiscal quarter of Parent and the Company to be less than \$200,000,000 plus, commencing March 31, 2005 and as of the end of each fiscal quarter thereafter, 40% of cumulative Consolidated Net Income (determined as set forth below in this Section 10.14). For purposes hereof, cumulative Consolidated Net Income shall be determined as of the last day of each fiscal quarter of Parent and the Company and shall be determined based on Consolidated Net Income as of the last day of each fiscal quarter of Parent and the Company, from December 31, 2004 through the end of the fiscal quarter for which the calculation of cumulative Consolidated Net Income is being made. For purposes of this Section, in no event shall cumulative Consolidated Net Income be less than zero.

**10.15. Senior Funded Debt/EBITDA.**

Parent and the Company will not at any time permit, the Senior Funded Debt to EBITDA Ratio to exceed 3.25 to 1.00.

**10.16. Total Funded Debt/EBITDA.**

Parent and the Company will not at any time permit the Total Funded Debt to EBITDA Ratio to exceed 3.75 to 1.00.

**10.17. Optional Payments of Subordinated Debt.**

Parent and the Company will not, and will not permit any Subsidiary to, make any optional payment of principal of or interest on any Subordinated Debt.

**10.18. Prepayments and Refinancings of Other Debt, Etc.** Parent and the Company will not, and will not permit any Subsidiary to, make (or give any notice in respect thereof) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including, without limitation, by way of depositing with the trustee with respect thereto money or securities before due for the purpose of paying when due) or exchange of, or refinance or refund, any Indebtedness of the Parent, the Company or any Subsidiary that has an outstanding principal balance (or Capitalized Lease Obligation, in the case of a Capital Lease, or present value, based on the implicit interest rate, in the case of a Synthetic Lease), greater than \$5,000,000 (other than the Indebtedness outstanding under the Credit Agreement, the Notes, the "Notes" (as defined in the 2002 Note Agreement) and intercompany loans and advances among a the Parent or the Company and its Subsidiaries); provided that the Parent, the Company or any Subsidiary may refinance or refund any such Indebtedness if the aggregate principal amount thereof (or Capitalized Lease Obligation, in the case of a Capital Lease, or present value, based on the implicit interest rate, in the case of a Synthetic Lease) is not increased.

**10.19. Environmental Compliance.**

It will not cause or permit any change to be made in the present or intended use of any property owned, leased or operated by Parent, the Company or any Subsidiary which would (i) involve the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Material or the use of any such property as a landfill or other waste disposal site or for the storage of petroleum or petroleum based products (except in compliance with applicable Environmental Laws), (ii) violate any applicable Environmental Laws, or (iii) constitute non-compliance with any Environmental Permit.

**10.20. Limitation on Certain Restrictive Agreements.** Parent and the Company will not, and will not permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist or become effective, any "negative pledge" covenant or other agreement restriction or arrangement that prohibits, restricts or imposes any condition upon (a) the ability of Parent, the Company or any Subsidiary to create, incur or suffer to exist any Lien upon any of its property or assets as security for Indebtedness, or (b) the ability of any such Subsidiary to pay dividends or any other interest or participation in its profits owned by a Parent, the Company or any Subsidiary or pay any Indebtedness owed to Parent, the Company or a Subsidiary, or to make loans or advances to Parent, the Company or Subsidiary, or transfer any of its property or assets to Parent, the Company or any Subsidiary, except for such restrictions existing under or by reason of (i) applicable law, (ii) this Agreement and the Related Documents, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest, (iv) customary provisions restricting assignment of any licensing agreement entered into in the ordinary course of business, (v) customary provisions restricting the transfer or further encumbering of assets subject to Liens permitted under clause (ii) or (iv) of Section 10.4, (vi) restrictions contained in the agreements relating to the Indebtedness set forth on Schedule 10.2 hereto as in effect on the date hereof (and any similar restrictions contained in any agreement governing any refinancing or refunding thereof not prohibited by this Agreement), (vii) customary restrictions affecting only a Subsidiary under any agreement or instrument governing any of the Indebtedness of a Subsidiary permitted pursuant to Section 10.2, (viii) restrictions affecting any Foreign Subsidiary under any agreement or instrument governing any Indebtedness of such Foreign Subsidiary permitted pursuant to Section 10.2, and customary restrictions contained in "comfort" letters and guarantees of any such Indebtedness, (ix) any document relating to Indebtedness secured by a Lien permitted by Section 10.4, insofar as the provisions thereof limit grants of junior liens on the assets securing such Indebtedness, and (x) any Operating Lease or Capital Lease, insofar as the provisions thereof limit grants of a security interest in, or other assignments of, the related leasehold interest to any other Person.

**10.21. Changes in Business; Change in Fiscal Year.** Neither Parent, Company nor any Subsidiary will engage in any business if, as a result, the general nature of the business, taken on a consolidated basis, which would then be engaged in by Parent and Subsidiaries, would be substantially changed from the general nature of the business engaged in by Parent and its Subsidiaries on the date hereof. Neither Parent nor the Company will change its Fiscal Year.

**11. Events of Default.**

An "Event of Default" shall exist if any of the following conditions or events shall occur and be continuing:

- (a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise, or defaults in the payment of any

fees or (except as provided in clause (b) below) other amounts payable hereunder or under any other Related Document when the same becomes due and payable; or

(b) the Company defaults in the payment of any interest on any Note for more than two Business Days after the same becomes due and payable; or

(c) Parent or the Company defaults in the performance of or compliance with any term contained in Section 10; or

(d) Parent or the Company defaults in the performance of or compliance with any term contained herein (other than those referred to in paragraphs (a), (b) and (c) of this Section 11) and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Company receiving written notice of such default from any Holder (any such written notice to be identified as a "notice of default" and to refer specifically to this paragraph (d) of Section 11); or

(e) any representation or warranty made in writing by or on behalf of Parent, the Company or by any officer of Parent or the Company in this Agreement or in any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made; or

(f) (i) Parent, the Company or any Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least \$10,000,000 beyond any period of grace provided with respect thereto, or (ii) Parent, the Company or any Subsidiary is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least \$10,000,000 or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Indebtedness has become, or has been declared (or one or more Persons are entitled to declare such Indebtedness to be), due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Indebtedness to convert such Indebtedness into equity interests), (x) Parent, the Company or any Subsidiary has become obligated to purchase or repay Indebtedness before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least \$10,000,000, or (y) one or more Persons have the right to require Parent, the Company or any Subsidiary so to purchase or repay such Indebtedness; or

(g) any of Parent, the Company or any Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(h) a court or governmental authority of competent jurisdiction enters an order appointing, without consent by Parent, the Company or any of its Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of Parent, the Company or any of its Subsidiaries, or any such petition shall be filed against Parent, the Company or any of its Subsidiaries and such petition shall not be dismissed within 90 days; or

(i) a final judgment or judgments for the payment of money aggregating in excess of \$10,000,000 are rendered against one or more of Parent, the Company and its Subsidiaries (other than any judgment for which it is fully insured as acknowledged by the insurance carrier) and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or

(j) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified Parent or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate "amount of unfunded benefit liabilities" (within the meaning of section 4001(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, shall exceed \$250,000, (iv) Parent or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) Parent or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) Parent or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of Parent or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect. As used in Section 11(i), the terms "employee benefit plan" and "employee welfare benefit plan" shall have the respective meanings assigned to such terms in section 3 of ERISA.

(k) any of Parent, the Company or any Subsidiary Guarantor shall fail to comply with the terms of any Related Document to which it is a party beyond applicable grace periods, if any, specified in such Related Document; or

(l) any of Parent or the Company or any Subsidiary Guarantor or any other Person shall disavow or attempt to terminate any or all of the Guaranty Agreements or any or all of the Guaranty Agreements shall cease to be in full force and effect in whole or in part for any reason whatsoever or any of Parent or the Company or any Subsidiary Guarantor shall so assert in writing; or

(m) all or any portion of the Security Interest granted to the Collateral Agent on behalf of the Secured Lender Group pursuant to each Security Agreement shall fail at any time to constitute a first priority security interest in or assignment of the collateral described in such Security Agreements subject only to Liens permitted thereunder or the Security Agreements shall cease to be in full force and effect in whole or in part for any reason whatsoever or any of Parent or the Company or any Subsidiary Guarantor shall so assert in writing.

## 12. Remedies on Default, Etc.

### 12.1. Acceleration.

(a) If an Event of Default with respect to the Company described in paragraph (g) or (h) of Section 11 has occurred, all the Notes then outstanding shall automatically become immediately due and payable and the Facility automatically shall be cancelled, such that the

Final Subsequent Notes, if not yet issued, will not be issued hereunder and the Cancellation Fee shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, any Holder or Holders of more than 25% in principal amount of the Notes at the time outstanding may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable and cancel the Facility, such that the Final Subsequent Notes, if not yet issued, will not be issued hereunder and the Cancellation Fee shall be immediately due and payable.

(c) If any Event of Default described in paragraph (a) of Section 11 has occurred and is continuing, any Holder or Holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable and cancel the Facility.

Upon any Notes becoming due and payable under this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus (x) all accrued and unpaid interest thereon, (y) if the Final Subsequent Notes have not yet been issued, the Cancellation Fee, (z) the Make-Whole Amount determined in respect of such principal amount and (aa) all other fees and amounts payable hereunder or under any of the Related Documents shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each Holder has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

#### 12.2. Other Remedies.

If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the Holder at the time outstanding may proceed to protect and enforce the rights of such Holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

#### 12.3. Rescission.

At any time after any Notes have been declared due and payable pursuant to clause (b) or (c) of Section 12.1, the Holders of not less than 51% in principal amount of the Notes then outstanding, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes, and all fees and other amounts that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, fees and other amounts and (to the extent permitted by applicable law) any overdue interest in respect of the Notes, at the Default Rate, (b) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 17, and (c) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

#### 12.4. No Waivers or Election of Remedies, Expenses, Etc.

No course of dealing and no delay on the part of any Holder in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such Holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or by any Note upon any Holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the Holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such Holder incurred in any enforcement or collection under this Section 12, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

### 13. Registration; Exchange; Substitution of Notes.

#### 13.1. Registration of Notes.

The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each Holder, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and Holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any Holder that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered Holders.

#### 13.2. Transfer and Exchange of Notes.

Upon surrender of any Note at the principal executive office of the Company for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Note or his attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof), the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the Holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such Holder may request and shall be substantially in the form of Exhibit 1. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$100,000, provided that if necessary to enable the registration of transfer by a Holder of its entire holding of Notes, one Note may be in a denomination of less than \$100,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 6.2.

#### 13.3. Replacement of Notes.

Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the Holder is, or is a nominee for, an original Purchaser or another Holder with a minimum net worth of at least \$50,000,000, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Company at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

#### 14. Payments on Notes.

##### 14.1. Place of Payment.

Subject to Section 14.2, payments of principal, Make-Whole Amount, if any, interest becoming due and payable on the Notes and all fees and other amounts payable hereunder or under any of the other Related Documents shall be made in New York, New York at the principal office of Bank of New York in such jurisdiction. The Company may at any time, by notice to each Holder, change the place of payment of the Notes and such other amounts so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

##### 14.2. Home Office Payment.

So long as you or your nominee shall be the Holder, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, interest and all fees and other amounts payable hereunder or under any of the other Related Documents by the method and at the address specified for such purpose below your name in Schedule A, or by such other method or at such other address as you shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, you shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.1. Prior to any sale or other disposition of any Note held by you or your nominee you will, at your election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 14.2 to any Institutional Investor that is the direct or indirect transferee of any Note purchased by you under this Agreement and that has made the same agreement relating to such Note as you have made in this Section 14.2.

#### 15. Expenses, Etc.

##### 15.1. Transaction Expenses.

Whether or not the transactions contemplated hereby are consummated, the Company will pay all costs and expenses (including reasonable attorneys' fees of a special counsel and, if reasonably required, local or other counsel) incurred by you or another Holder in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement or the Notes or any other Related Document (whether or not such amendment, waiver or consent becomes effective), including, without limitation: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement or the Notes or any other Related Document or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or the Notes or any other Related Document, or by reason of being a Holder; and (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of Parent, the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes and the Related Documents. The Company will pay, and will save you and each other Holder harmless from, all claims in respect of any fees, costs or expenses if any, of brokers and finders.

##### 15.2. Survival.

The obligations of the Company under this Section 15 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or the Notes, and the termination of this Agreement.

#### 16. Survival of Representations and Warranties; Entire Agreement.

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by you of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of you or any other Holder. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement and the Notes embody the entire agreement and understanding between you and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

#### 17. Amendment and Waiver.

##### 17.1. Requirements.

This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Section 1, 2, 3, 4, 5, 6 or 21 hereof, or any defined term (as it is used therein), will be effective as to you unless consented to by you in writing, and (b) no such amendment or waiver may, without the written consent of the Holder at the time outstanding affected thereby, (i) subject to the provisions of Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest or of the Make-Whole Amount on, the Notes, (ii) change the percentage of the principal amount of the Notes the Holders of which are required to consent to any such amendment or waiver, or (iii) amend any of Sections 8, 11(a), 11(b), 12, 17 or 20.

##### 17.2. Solicitation of Holders.

(a) **Solicitation.** The Company will provide each Holder (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such Holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 17 to each Holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite Holders.

(b) **Payment.** The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any Holder as consideration for or as an inducement to the entering into by any Holder or any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each Holder then outstanding even if such Holder did not consent to such waiver or amendment.

### 17.3. Binding Effect, Etc.

Any amendment or waiver consented to as provided in this Section 17 applies equally to all Holders and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and the Holder nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any Holder. As used herein, the term "this Agreement" and references thereto shall mean this Agreement as it may from time to time be amended or supplemented. From and after the date of satisfaction of the conditions precedent set forth in Section 3, all references in the Original Note Agreement or this Agreement or in any of the Related Documents (whether delivered pursuant to this Agreement or pursuant to the Original Note Agreement) to "this Agreement" or the "Note Purchase Agreement" and the words "herein", "hereof" and words of like import referring to the Original Note Agreement or this Agreement shall mean and be references to the Original Note Agreement as amended and restated in its entirety by this Agreement. This Agreement amends and restates the Original Note Agreement in its entirety and it is the intent of the parties hereto that nothing contained herein shall constitute a novation or an accord and satisfaction.

### 17.4. Notes held by Company, Etc.

Solely for the purpose of determining whether the Holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or the Notes, or have directed the taking of any action provided herein or in the Notes to be taken upon the direction of the Holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

### 18. Notices.

All notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

- (i) if to you or your nominee, to you or it at the address specified for such communications in Schedule A, or at such other address as you or it shall have specified to the Company in writing,
- (ii) if to any other Holder of any Note, to such Holder at such address as such other Holder shall have specified to the Company in writing, or
- (iii) if to the Company, to the Company at its address set forth at the beginning hereof to the attention of John E. Flint, or at such other address as the Company shall have specified to each Holder in writing.

Notices under this Section 18 will be deemed given only when actually received.

### 19. Reproduction of Documents.

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by you at the Closing (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to you, may be reproduced by you by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and you may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by you in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit the Company or any other Holder from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

### 20. Confidential Information.

For the purposes of this Section 20, "Confidential Information" means information delivered to you by or on behalf of Parent, the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by you as being confidential information of Parent, the Company or such Subsidiary, provided that such term does not include information that (a) was publicly known or otherwise known to you prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by you or any person acting on your behalf, (c) otherwise becomes known to you other than through disclosure by Parent, the Company or any Subsidiary or (d) constitutes financial statements delivered to you under Section 7.1 that are otherwise publicly available. You will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by you in good faith to protect confidential information of third parties delivered to you, provided that you may deliver or disclose Confidential Information to (i) your directors, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by your Notes), (ii) your financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 20, (iii) any other Holder, (iv) any Institutional Investor to which you sell or offer to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (v) any Person from which you offer to purchase any security of the Company (if such Person has agreed in writing prior to its

receipt of such Confidential Information to be bound by the provisions of this Section 20), (vi) any federal or state regulatory authority having jurisdiction over you, (vii) the National Association of Insurance Commissioners or any similar organization, or any nationally recognized rating agency that requires access to information about your investment portfolio or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to you, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which you are a party or (z) if an Event of Default has occurred and is continuing, to the extent you may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under your Notes and this Agreement. In the event Prudential or any of the Prudential Affiliates are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands or similar process), in connection with any proceeding, to disclose any Confidential Information, they will, unless prohibited by law, rule or regulation, provide Parent with notice of any such request or requirement so that Parent may seek a protective order or other appropriate remedy. In the event such protective order or other remedy is not obtained and upon written request from Parent, Prudential or such Prudential Affiliate will use reasonable efforts to obtain assurances that confidential treatment will be accorded to such information; provided, however, that all legal fees and costs and any other expense incurred in connection with such efforts shall be paid by Parent. Each Holder, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20 as though it were a party to this Agreement. On reasonable request by Parent or the Company in connection with the delivery to any Holder of information required to be delivered to such Holder under this Agreement or requested by such Holder (other than a holder that is a party to this Agreement or its nominee), such Holder will enter into an agreement with Parent or the Company, as the case may be, embodying the provisions of this Section 20.

**21. Substitution of Purchaser.**

You shall have the right to substitute any Prudential Affiliate as the purchaser of the Notes that you have agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both you and such Prudential Affiliate, shall contain such Prudential Affiliate's agreement to be bound by this Agreement and shall contain a confirmation by such Prudential Affiliate of the accuracy with respect to it of the representations set forth in Section 6. Upon receipt of such notice, wherever the word "you" is used in this Agreement (other than in this Section 21), such word shall be deemed to refer to such Prudential Affiliate in lieu of you. In the event that such Prudential Affiliate is so substituted as a purchaser hereunder and such Prudential Affiliate thereafter transfers to you all of the Notes then held by such Prudential Affiliate, upon receipt by the Company of notice of such transfer, wherever the word "you" is used in this Agreement (other than in this Section 21), such word shall no longer be deemed to refer to such Prudential Affiliate, but shall refer to you, and you shall have all the rights of an original holder of the Notes under this Agreement.

**22. Miscellaneous.**

**22.1. Successors and Assigns.**

All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder of a Note) whether so expressed or not.

**22.2. Payments Due on Non-Business Days.**

Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal of or Make-Whole Amount, interest on any Note or any fee or other amount payable hereunder or under any of the other Related Documents that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day.

**22.3. Severability.**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

**22.4. Construction.**

Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

**22.5. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

**22.6. Governing Law/Submission to Jurisdiction/Waiver of Jury.**

(a) This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

(b) EACH HOLDER AND EACH OF PARENT AND THE COMPANY HEREBY SUBMITS TO THE JURISDICTION OF THE COURTS (FEDERAL AND STATE) OF THE STATE OF NEW YORK, AND IRREVOCABLY AGREES THAT, SUBJECT TO THE SOLE AND ABSOLUTE ELECTION OF THE REQUIRED HOLDERS, ALL ACTIONS OR PROCEEDINGS RELATING TO THIS AGREEMENT OR THE NOTES OR ANY OTHER RELATED DOCUMENT SHALL BE LITIGATED IN SUCH COURTS, AND SUCH HOLDER, PARENT AND THE COMPANY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING IN ANY SUCH COURT.

(c) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES

THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FORGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS ELECTION.

22.7. Capitalized Terms/Interpretation.

- (a) Certain capitalized terms used in this Agreement are defined in Schedule B.
- (b) References to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement.
- (c) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP consistent with those applied in the preparation of the audited Consolidated financial statements of Parent and its Subsidiaries referred to in this Agreement. Capitalized words not otherwise defined in this Agreement shall have the meanings set forth in the New York Uniform Commercial Code as in effect on the date of this Agreement.

\* \* \* \* \*

If you are in agreement with the foregoing, please sign the form of agreement on the accompanying counterpart of this Agreement and return it to the Company, whereupon the foregoing shall become a binding agreement between you and the Company.

Very truly yours,

GIBRALTAR STEEL CORPORATION

By \_\_\_\_\_  
John E. Flint  
Vice President

GIBRALTAR STEEL CORPORATION OF  
NEW YORK

By \_\_\_\_\_  
John E. Flint  
Vice President

The foregoing is hereby  
agreed to as of the  
date thereof.

THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA

By: \_\_\_\_\_  
Vice President

PRUCO LIFE INSURANCE COMPANY

By: \_\_\_\_\_  
Vice President

SCHEDULE A

INFORMATION RELATING TO PURCHASERS

\_\_\_\_\_  
Name and Address of Purchaser

\_\_\_\_\_  
Aggregate Principal Amount of  
Notes to be Purchased

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

- (1) All payments by wire transfer of immediately available funds for credit to: \$71,363,000

JPMorgan Chase Bank  
New York, New York  
(ABA No.: 021-000-021)



Each such wire transfer shall set forth the name of the Company, a reference to "5.75% Senior Secured Note due June 17, 2011, PPN \_\_\_\_\_ in the original principal amount of \$ \_\_\_\_\_", and the due date and application (as among principal, interest and Make-Whole Amount) of the payment being made.

- (2) Address for all notices relating to payments:

The Prudential Insurance Company of America  
c/o Investment Operations Group  
Gateway Center Two, 10<sup>th</sup> Floor  
100 Mulberry Street  
Newark, New Jersey 07102  
Attention: Manager, Billings and Collections  
Telecopier: 973.802.8055

- (3) Address for all communications and notices (including copies of all notices relating to payments):

The Prudential Insurance Company of America  
c/o Prudential Capital Group  
1114 Avenue of the Americas, 30<sup>th</sup> Floor  
New York, NY 10036  
Attention: Managing Director  
Telecopier: 212.626.2077

- (4) Recipient of telephonic prepayment notices:

Manager, Trade Management Group  
Telephone: 973.802.8107  
Telecopier: 800.224.2778

- (5) Tax Identification No.: 22-1211670

**SCHEDULE A (CONTINUED)**  
**INFORMATION RELATING TO PURCHASERS**

Name and Address of Purchaser

Aggregate Principal Amount of  
Notes to be Purchased

PRUCO LIFE INSURANCE COMPANY

- (1) All payments by wire transfer of immediately available funds for credit to:

\$3,637,000

JPMorgan Chase Bank  
New York, New York  
(ABA No.: 021-000-021)  
P86192

Each such wire transfer shall set forth the name of the Company, a reference to "5.75% Senior Secured Note due June 17, 2011, PPN \_\_\_\_\_ in the original principal amount of \$ \_\_\_\_\_", and the due date and application (as among principal, interest and Make-Whole Amount) of the payment being made.

- (2) Address for all notices relating to payments:

Pruco Life Insurance Company  
c/o The Prudential Insurance Company of America  
c/o Investment Operations Group  
Gateway Center Two, 10<sup>th</sup> Floor  
100 Mulberry Street  
Newark, New Jersey 07102  
Attention: Manager, Billings and Collections  
Telecopier: 973.802.8055

- (3) Address for all communications and notices (including copies of all notices relating to payments):

Pruco Life Insurance Company  
c/o The Prudential Insurance Company of America  
c/o Prudential Capital Group  
1114 Avenue of the Americas, 30<sup>th</sup> Floor  
New York, NY 10036  
Attention: Managing Director  
Telecopier: 212.626.2077

(4) Recipient of telephonic prepayment notices:

Manager, Trade Management Group  
Telephone: 973.802.8107  
Telecopier: 800.224.2778

(5) Tax Identification No.: 22-1944557

## SCHEDULE B

### DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

"Acquisition" means and includes (whether in one transaction or a series of transactions) (i) any acquisition on a going concern basis (whether by purchase, lease or otherwise) of any facility and/or business or business unit operated by any Person that is not a Subsidiary of Parent or the Company, and (ii) acquisitions of a majority of the outstanding equity or other similar interests in any such Person (whether by merger, stock purchase or otherwise).

"Affiliate" means with respect to a specified Person, any (a) Person who now or hereafter has Control of or is now or hereafter under common Control with, such Person or over whom or over which such Person now or hereafter has Control, (b) any Person who is now or hereafter related by blood, by adoption or by marriage to any such Person or now or hereafter resides in the same home as any Person referred to in clause (a) of this sentence, (c) any Person who is now or hereafter an officer of such Person or (d) any Person who is now or hereafter related by blood, by adoption or by marriage to any Person referred to in clause (c) of this sentence or now or hereafter resides in the same home as any such Person or over whom or over which any such Person now or hereafter has Control.

"Asset Sale" means the sale, transfer or other disposition (including by means of Sale and Lease-Back Transactions, and by means of mergers, consolidations, and liquidations of a corporation, partnership or limited liability company of the interests therein of Parent, the Company or any Subsidiary) by Parent, the Company or any Subsidiary to any Person of any of their respective assets, provided that the term Asset Sale specifically excludes (i) any sales, transfers or other dispositions of inventory, or obsolete or excess furniture, fixtures, equipment or other property, real or personal, tangible or intangible, in each case in the ordinary course of business, and (ii) any Event of Loss.

"Business Day" means any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

"Cancellation Date" is defined in Section 2.

"Cancellation Fee" means, the amount calculated as follows:

$$\text{Price Increase} \times \text{Full Price}$$

where:

**Price Increase** means the excess, if any, of the ask price of the Hedge Treasury Note(s) as determined by Prudential on the Cancellation Date over the bid price of the Hedge Treasury Note(s) as determined by Prudential on the Rate Lock Date, divided by such bid price. Each price will be based on a Treasury Note having a par value of \$100 and will be rounded to the second decimal place; and

**Full Price** means the principal amount of the Final Subsequent Notes for which the rate was fixed on the Rate Lock Date.

"Capital Lease" as applied to any Person means any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of that person.

"Capitalized Lease Obligations" means all obligations under Capital Leases of Parent, the Company or any Subsidiary in each case taken at the amount thereof accounted for as liabilities identified as "capital lease obligations" (or any similar words) on a consolidated balance sheet of Parent and its Subsidiaries prepared in accordance with GAAP.

"Cash Equivalents" means any of the following

- (i) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than one year from the date of acquisition;
- (ii) Dollar denominated time deposits, certificates of deposit and bankers' acceptances of (x) any lender under the Credit Agreement ("Lender") or (y) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank, an "Approved Bank"), in each case with maturities of not more than three months from the date of acquisition;
- (iii) commercial paper issued by any Lender or Approved Bank or by the parent company of any Lender or Approved Bank and commercial paper issued by, or guaranteed by, any industrial or financial company with a short-term commercial paper rating of at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's, or guaranteed by any industrial company with a long term unsecured debt rating of at least A or A2, or the equivalent of each thereof, from S&P or Moody's, as the case may be, and in each case maturing within 90 days after the date of acquisition;
- (iv) fully collateralized repurchase agreements entered into with any Lender or Approved Bank having a term of not more than 30 days and covering securities described in clause (i) above;
- (v) investments in money market funds substantially all the assets of which are comprised of securities of the types described in clauses (i) through (iv) above;

(vi) investments in money market funds access to which is provided as part of "sweep" accounts maintained with a Lender or an Approved Bank;

(vii) investments in industrial development revenue bonds that (A) "re-set" interest rates not less frequently than quarterly, (B) are entitled to the benefit of a remarketing arrangement with an established broker dealer, and (C) are supported by a direct pay letter of credit covering principal and accrued interest that is issued by an Approved Bank; and

(viii) investments in pooled funds or investment accounts consisting of investments of the nature described in the foregoing clause (vii).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same may be amended from time to time, 42 U.S.C. Section 9601 et seq.

"Change of Control" means any Person or related Persons (other than members of the Kenneth Lipke family, their heirs or estates or trusts for the benefit of members of the Kenneth Lipke family) shall own 50% or more of outstanding capital stock of the Company or a sufficient number of the shares of the outstanding capital stock of the Company to elect a majority of the Company's board of directors.

"Claims" shall have the meaning set forth in the definition of "Environmental Claims."

"Closing Day" means, with respect to the Final Subsequent Notes, the Business Day specified for the purchase and sale of such Notes in the Notice of Issuance of such Notes; provided that (i) if the company and Purchasers agree on an earlier Business Day for such closing, the "Closing Day" for such Notes shall be such earlier Business Day and (ii) if the closing of the purchase and sale of such Notes is rescheduled pursuant to Section 2E(2), the Closing Day for such Notes, for all purposes of this Agreement except references to Section 2F(1) and in the definitions of the Delayed Delivery Fee shall mean the Rescheduled Closing Day for such Notes.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"Collateral" is defined in the Security Agreements.

"Collateral Agent" means KeyBank National Association, as Collateral Agent, under the Security Agreements on behalf of the Secured Lender Group, and any successor Collateral Agent.

"Collateral Documents" means, collectively, the Guaranty Agreements and the Security Agreements.

"Company" means Gibraltar Steel Corporation of New York, a Delaware corporation, and its successors and permitted assigns.

"Confidential Information" is defined in Section 20.

"Consideration" means in connection with an Acquisition, the aggregate consideration paid, including borrowed funds, cash, the issuance of securities or notes, the assumption or incurring of liabilities (direct or contingent), the payment of consulting fees or fees for a covenant not to compete and any other consideration paid for the purchase.

"Consolidated" or "Parent on a Consolidated basis" means the consolidation of the accounts of Parent and its Subsidiaries in accordance with GAAP, including principles of consolidation, consistent with those applied in the preparation of Parent's Consolidated audited financial statements.

"Consolidated Capital Expenditures" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events amounts expended or capitalized under Capital Leases and Synthetic Leases but excluding any amount representing capitalized interest) by Parent, the Company and any Subsidiary during that period that, in conformity with GAAP, are or are required to be included in the property, plant or equipment reflected in the consolidated balance sheet of Parent and its Subsidiaries.

"Consolidated Depreciation and Amortization Expense" means, for any period, all depreciation and amortization expenses of the Parent and its Subsidiaries, all as determined for Parent and its Subsidiaries on a consolidated basis in accordance with GAAP.

"Consolidated EBIT" means, for any period, Consolidated Net Income for such period; plus (A) the sum of the amounts for such period included in determining such Consolidated Net Income of (i) Consolidated Interest Expense and (ii) Consolidated Income Tax Expense, provided that, notwithstanding anything to the contrary contained herein, the Parent's Consolidated EBIT for any Testing Period shall (x) include the appropriate financial items for any Person or business unit that has been acquired by Parent, the Company or any Subsidiary for any portion of such Testing Period prior to the date of acquisition on a pro forma basis (but excluding anticipated operating synergies), and (y) exclude the appropriate financial items for any Person or business unit that has been disposed of by Parent, the Company or any Subsidiary, for the portion of such Testing Period prior to the date of disposition, in the case of clauses (x) and (y), subject to the Required Holders' reasonable discretion and supporting documentation acceptable to the Required Holders.

"Consolidated EBITDA" means, for any period, Consolidated Net Income for such period; plus (A) the sum of the amounts for such period included in determining such Consolidated Net Income of (i) Consolidated Interest Expense, (ii) Consolidated Income Tax Expense, (iii) Consolidated Depreciation and Amortization Expense, and (iv) extraordinary and other non-recurring non-cash losses and charges; less (B) gains on sales of assets and other extraordinary gains and other non-recurring gains; all as determined for Parent and its Subsidiaries on a consolidated basis in accordance with GAAP; provided that, notwithstanding anything to the contrary contained herein, Parent's Consolidated EBITDA for any Testing Period shall (x) include the appropriate financial items for any Person or business unit that has been acquired by Parent, the Company or any Subsidiary for any portion of such Testing Period prior to the date of acquisition on a pro forma basis (but excluding anticipated operating synergies), and (y) exclude the appropriate financial items for any Person or business unit that has been disposed of by a Parent, the Company or any Subsidiary, for the portion of such Testing Period prior to the date of disposition, in the case of clauses (x) and (y), subject to Required Holders' reasonable discretion and supporting documentation acceptable to Required Holders.

"Consolidated Income Tax Expense" means for any period, all provisions for taxes based on the net income of Parent and its Subsidiaries (including, without limitation, any additions to such taxes, and any penalties and interest with respect thereto), all as determined for Parent and its Subsidiaries on a consolidated basis in accordance with GAAP.

"Consolidated Interest Expense" means, for any period, total interest expense (including that which is capitalized, that which is attributable to Capital Leases or Synthetic Leases and the pre-tax equivalent of dividends payable on Redeemable Stock) of Parent and its Subsidiaries on a

consolidated basis with respect to all outstanding Indebtedness of Parent and its Subsidiaries including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Hedge Agreements.

"Consolidated Net Income" means for any period, the net income (or loss) of Parent and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

"Consolidated Net Rent Expense" means, for any period, the total amount of rent or similar obligations required to be paid during such period by Parent and its Subsidiaries in respect of Operating Leases, as determined on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

"Consolidated Net Worth" means at any time for the determination thereof all amounts that, in conformity with GAAP would be included under the caption "total stockholders' equity" (or any like caption) on a consolidated balance sheet of Parent and its Subsidiaries as at such date, provided that in no event shall Consolidated Net Worth include any amounts in respect of Redeemable Stock.

"Consolidated Senior Funded Debt" means the Consolidated Total Funded Debt exclusive of Subordinated Indebtedness.

"Consolidated Total Funded Debt" means the sum (without duplication) of all Indebtedness of Parent and its Subsidiaries for borrowed money, all as determined on a consolidated basis.

"Control" means (i) the power to vote 5% or more of the outstanding shares of any class of stock of a Person which is a corporation, (ii) the beneficial ownership of 5% or more of the outstanding shares of any class of stock of a Person which is a corporation or (iii) the power to direct or cause the direction of the management and policies of a Person which is not a corporation, whether by ownership of any stock or other ownership interest, by agreement or otherwise, in each case by or on behalf of a single Person or group of Persons acting as a group for the purposes of filing Form 13-D with the Securities and Exchange Commission.

"Credit Agreement" means that certain Credit Agreement, dated as of even date herewith, among Parent, the Company, KeyBank National Association, as Administrative Agent, Swing Line Lender, Letter of Credit Issuer, Lead Arranger and Book Runner, each of the Lenders a party thereto, and each of the other parties thereto, as it may be amended, modified, restated, extended or supplemented from time to time.

"Default" means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"Default Rate" means that rate of interest that is the greater of (i) 2% per annum above the rate of interest stated in clause (a) of the first paragraph of the Notes or (ii) 2% over the rate of interest publicly announced by Bank of New York in New York, New York as its "base" or "prime" rate.

"Delayed Delivery Fee" means, the amount calculated as follows:

$$(BEY - MMY) \times DTS/360 \times \text{Full Price};$$

where:

BEY means the bond equivalent yield of the Final Subsequent Notes;

DTS, or Days to Settlement, means the number of days from (a) the date that is 497 days after the Rate Lock Date, to (b) the date on which the Delayed Delivery Fee is to be paid pursuant to the terms of this Agreement;

MMY, or Money Market Yield, means the yield of an alternative investment selected by Prudential on the date Prudential receives notice of a delay in the Closing Day of the Final Subsequent Notes financing as provided in Section 2E(2) having a maturity date approximately equal to the rescheduled original Closing Day (a new alternative investment will be selected each time such Closing Day is delayed); and

Full Price means the principal amount of the Final Subsequent Notes for which the rate was fixed on the Rate Lock Date.

"Domestic Subsidiary" means any Subsidiary organized under the laws of the United States of America, any State thereof, the District of Columbia, or any United States possession.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law or any permit issued under any such law (hereafter "Claims"), including, without limitation, (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the storage, treatment or Release (as defined in CERCLA) of any Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Law" means any applicable Federal, state, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy and rule of common law now or hereafter in effect and in each case as amended, and any binding and enforceable judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment issued to or rendered against Parent, the Company or any Subsidiary relating to the environment, employee health and safety or Hazardous Materials, including, without limitation, CERCLA; RCRA; the Federal Water Pollution Control Act, 33 U.S.C. Section 2601 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. Section 1801 et seq., and the Occupational Safety and Health Act 29 U.S.C. Section 651 et seq. (to the extent it regulates occupational exposure to Hazardous Materials); and any state and local or foreign counterparts or equivalents, in each case as amended from time to time.

"Environmental Permits" means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with ownership, lease, purchase, transfer, closure, use and/or operation of any property for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials or the sale, transfer or conveyance of any such property.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date hereof and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

"ERISA Affiliate" means each person (as defined in Section 3(9) of ERISA), which together with Parent, the Company or a Subsidiary, would be deemed to be a "single employer" (i) within the meaning of Section 414(b), (c), (m) or (o) of the Code or (ii) as a result of Parent, the Company or a Subsidiary being or having been a general partner of such person.

"Event of Default" is defined in Section 11.

"Event of Loss" means, with respect to any property, (i) the actual or constructive total loss of such property or the use thereof, resulting from destruction, damage beyond repair, or the rendition of such property permanently unfit for normal use from any casualty or similar occurrence whatsoever, (ii) the destruction or damage of a portion of such property from any casualty or similar occurrence whatsoever under circumstances in which such damage cannot reasonably be expected to be repaired, or such property cannot reasonably be expected to be restored to its condition immediately prior to such destruction or damage, within 90 days after the occurrence of such destruction or damage, (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, any property, or (iv) in the case of any property located upon a leasehold, the termination or expiration of such leasehold if such termination is likely to materially impair the Collateral Agent's access to any material portion of the Collateral.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Subsidiaries" means GIT Ltd., Gibraltar Construction Products, Inc. and GSC Flight Service Inc.

"Facility" is defined in Section 2.

"Final Subsequent Notes" is defined in Section 2.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"GAAP" means of the date of any determination, generally accepted accounting principles as promulgated by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants, consistently applied and maintained throughout the relevant periods and from period to period.

"Governmental Authority" means

- (a) the government of
  - (i) the United States of America or any State or other political subdivision thereof, or
  - (ii) any jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or
- (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

"Guarantee" means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

- (a) to purchase such indebtedness or obligation or any property constituting security therefor;
- (b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;
- (c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or
- (d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guarantee, the indebtedness or other obligations that are the subject of such Guarantee shall be assumed to be direct obligations of such obligor.

"Guaranty Agreement" and, collectively, "Guaranty Agreements" means each Guarantee executed and delivered by each of Parent and each of its Subsidiaries, other than the Company substantially in the form of Exhibit B-1 hereto, as it may be amended, modified or supplemented from time to time.

"Hazardous Materials" means (i) any petrochemical or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; and (ii) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous wastes," "restrictive hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar meaning and regulatory effect, under any applicable Environmental Law.

"Hedge Agreement" means (i) any interest rate swap agreement, any interest rate cap agreement, any interest rate collar agreement or other similar agreement or arrangement designed to protect against fluctuations in interest rates, and (ii) any currency swap agreement, forward currency purchase agreement or similar agreement or arrangement designed to protect against fluctuations in currency exchange rates.

"Hedge Treasury Note(s)" means the Treasury Note(s) designated by Prudential on the Rate Lock Date as the Treasury Note(s) which has/have a duration that is closest to the duration of the Notes. The price and/or yield of the Hedge Treasury Note(s) will be determined by Prudential by reference to such price and/or yield as reported by TradeWeb LLC (or, if such data for any reason ceases to be available through TradeWeb LLC, any publicly available source of similar market data), on the date of determination.

"Holder" means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1.

"Holders' Share" means the quotient obtained by dividing (i) the outstanding total liabilities of the Company to Holders under the Notes and hereunder on the date of the applicable notice of prepayment pursuant to Section 8.6 by (ii) the sum of (A) the liabilities described in the preceding clause (i) plus (B) the liabilities of the Company to the "Holders" of the "Notes" issued pursuant to the 2002 Note Agreement plus (C) the liabilities of the Parent and the Company to the Lenders under the Credit Agreement, all as of such notice date.

"Indebtedness" of any Person means without duplication (i) all indebtedness of such Person for borrowed money; (ii) all bonds, notes, debentures and similar debt securities of such person; (iii) the deferred purchase price of capital assets or services that in accordance with GAAP would be shown on the liability side of the balance sheet of such Person; (iv) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder; (v) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances; (vi) all Indebtedness of a second Person secured by any Lien on any property owned by such first Person, whether or not such indebtedness has been assumed; (vii) all Capitalized Lease Obligations of such Person; (viii) the present value, determined on the basis of the implicit interest rate, of all basic rental obligations under all Synthetic Leases of such Person; (ix) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted, i.e., take-or-pay and similar obligations; (x) all net obligations of such Person under Hedge Agreements; (xi) the full outstanding balance of trade receivables, notes or other instruments sold with full recourse (and the portion thereof subject to potential recourse, if sole with limited recourse), other than in any such case any thereof sold solely for purposes of collection of delinquent accounts; (xii) the stated value, or liquidation value if higher, of all Redeemable Stock of such Person; and (xiii) any Guarantees of such Person (without duplication under clause (vi)); provided, however that (x) neither trade payables nor other similar accrued expenses, in each case arising in the ordinary course of business, nor obligations in respect of insurance policies or performance or surety bonds that themselves are not guarantees of Indebtedness (nor drafts, acceptances or similar instruments evidencing the same nor obligations in respect of letters of credit supporting the payment of the same), shall constitute Indebtedness; and (y) the Indebtedness of any Person shall in any event include (without duplication) the Indebtedness of any other entity (including any general partnership in which such Person is a general partner) to the extent such Person is liable thereon as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide expressly that such Person is not liable thereon.

"Institutional Investor" means (a) any original purchaser of a Note, (b) any holder of a Note holding more than 5% of the aggregate principal amount of the Notes then outstanding, and (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any investment fund or similar vehicle, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated as of even date herewith among the Secured Lender Group, as it may be amended, modified, restated or supplemented from time to time in accordance with its terms.

"Interest Coverage Ratio" shall mean, for any Testing Period, the ratio of (i) Consolidated EBIT to (ii) Consolidated Interest Expense, in each case on a consolidated basis for Parent and its Subsidiaries for the Testing Period.

"Investment" means (i) any direct or indirect purchase or other acquisition by Parent, the Company or any Subsidiary of any of the capital stock or other equity interest of any other Person (other than a Person that is, or after giving effect to such purchase or acquisition would be, a Subsidiary Guarantor), including any partnership or joint venture interest in such Person; or (ii) any loan or advance to, guarantee or assumption of debt or purchase or other acquisition of any other debt of, any Person (other than a Person that is, or after giving effect to such loan, advance or capital contribution would be, a Subsidiary Guarantor), by Parent, the Company or any Subsidiary.

"Issuance Period" is defined in Section 2.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, security interest, lien, charge or encumbrance, or preference, priority or other security agreement or preferential arrangement in respect of any asset of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

"Make-Whole Amount" is defined in Section 8.7.

"Material" means material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of Parent and its Subsidiaries taken as a whole.

"Material Adverse Effect" means any or all of the following (i) any material adverse effect on the business, operations, property, assets, liabilities, financial or other condition or prospects of Parent, the Company or Parent and its Subsidiaries, taken as a whole; (ii) any material adverse effect on the ability of Parent, the Company or any Subsidiary Guarantor to perform any of its obligations under any Related Document to which it is a party; (iii) any material adverse effect on the ability of the Parent and its Subsidiaries, taken as a whole, to pay their liabilities and obligations as they mature or become due; or (iv) any material adverse effect on the validity, effectiveness or enforceability, as against Parent, the Company or any Subsidiary, of any of the Related Documents to which it is a party.

"Maximum Amount" is defined in Section 1.

"Multiemployer Plan" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA to which Parent, the Company or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

"Multiple Employer Plan" means an employee benefit plan, other than a Multiemployer Plan, to which Parent, the Company or any ERISA Affiliate, and one or more employers other than Parent, the Company or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Parent, the Company or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

"Notes" is defined in Section 1.

"Notice of Issuance" is defined in Section 2.

"OFAC" is defined in Section 5.23.

"Officer's Certificate" means a certificate of a Senior Financial Officer or of any other officer of Parent and/or the Company, as applicable, whose responsibilities extend to the subject matter of such certificate.

"Operating Lease" as applied to any Person shall mean any lease of any property (whether real, personal or mixed) by that person as lessee that, in conformity with GAAP, is not accounted for as a Capital Lease on the balance sheet of that person.

"Original Note Agreement" is defined in Section 1.

"Other Lists" is defined in Section 5.23.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"Permitted Acquisition" means and includes any Acquisition as to which all of the following conditions are satisfied:

- (i) such Acquisition involves a line or lines of business that will not substantially change the general nature of the business in which Parent, the Company and their Subsidiaries, considered as an entirety, are engaged on the date hereof;
- (ii) no Default or Event of Default shall exist prior to or immediately after giving effect to such Acquisition;
- (iii) Parent and its Subsidiaries would, after giving effect to such Acquisition on a pro forma basis, be in compliance with the financial covenants set forth in Sections 10.13 through 10.16.
- (iv) Parent and its Subsidiaries would, after giving effect to such Acquisition, on a pro forma basis, have Post-Acquisition Liquidity of no less than \$25,000,000; and
- (v) at least five Business Days prior to the completion of such Acquisition, Parent shall have delivered to Holders (A) in the case of any Acquisition in which the aggregate Consideration to be paid is in excess of \$5,000,000 (or in the case of any Acquisition in which the Consideration to be paid, together with the aggregate Consideration paid in connection with all other Permitted Acquisitions made during the same fiscal quarter as such Acquisition, is in excess of the aggregate amount of \$5,000,000), a certificate of a Responsible Officer of Parent demonstrating in reasonable detail, the computation of the financial covenants referred to in Sections 10.13 through 10.16 on a pro forma basis as of the most recently ended fiscal quarter, and (B) in the case of any Acquisition in which the aggregate Consideration is in excess of \$10,000,000, historical financial statements relating to the business or Person to be acquired, financial projections relating to Parent and its Subsidiaries after giving effect to such Acquisition and such other information as Holders may reasonably request.

"Permitted Encumbrances" means Liens which are permitted pursuant to Section 10.4.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated association, government or political subdivision or other entity, body, organization or group.

"Plan" means any multiemployer or single-employer plan, as defined in Section 4001 of ERISA, that is maintained or contributed to by (or to which there is an obligation to contribute by) Parent, the Company, a Subsidiary or an ERISA Affiliate, and each such plan for the five year period immediately following the latest date on which Parent, the Company, a Subsidiary or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to such plan.

"Post-Acquisition Liquidity" shall mean the sum of Unutilized Total Commitment (as defined in the Credit Agreement) and any unencumbered cash balances of Parent and its Subsidiaries.

"Preferred Stock" means any class of capital stock of a corporation that is preferred over any other class of capital stock of such corporation as to the payment of dividends or the payment of any amount upon liquidation or dissolution of such corporation.

"Prohibited Transaction" means a transaction with respect to a Plan that is prohibited under Section 4975 of the Code or Section 406 of ERISA and not exempt from Section 4975 of the Code or Section 408 of ERISA.

"Property" or "Properties" means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

"Prudential" shall mean Prudential Investment Management, Inc.

"Prudential Affiliate" shall mean (i) any corporation or other entity controlling, controlled by, or under common control with, Prudential and (ii) any managed account or investment fund which is managed by Prudential or a Prudential Affiliate described in clause (i) of this definition. For purposes of this definition the terms "control", "controlling" and "controlled" shall mean the ownership, directly or through subsidiaries of a majority of a corporation's or other Person's voting stock or equivalent voting securities or interests.

"Purchaser" and "Purchasers" are defined in Section 1.

"Rate Lock Date" means May 6, 2004.

"RCRA" means the Resource Conservation and Recovery Act, as the same may be amended from time to time, 42 U.S.C. Section 6901 et seq.

"Redeemable Stock" means with respect to any Person any capital stock or similar equity interests of such person that: (i) is by its terms subject to mandatory redemption, in whole or in part, pursuant to a sinking fund, scheduled redemption or similar provisions, at any time prior to the maturity date of the Notes; or (ii) otherwise is required to be repurchased or retired on a scheduled date or dates, upon the occurrence of any event or circumstance, at the option of the holder or holders thereof, or otherwise, at any time prior to the maturity date of the Notes other than any such repurchase or retirement occasioned by a "change of control" or similar event.

"Related Documents" means this Agreement, any Note, any Collateral Document, the Intercreditor Agreement and any other document, certificate or other writing executed in connection with any of the foregoing.

"Release" means the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. section 9601, et seq.), and the regulations promulgated thereunder.

"Reportable Event" means an event described in Section 4043 of ERISA or the regulations thereunder with respect to a Plan, other than those events as to which the notice requirement is waived under subsections .22, .23, .25, .27, .28, .29, .30, .31, .32, .34, .35, .62, .63, .64, .65 or .67 of PBGC Regulation Section 4043.

"Required Holders" means, at any time, the Holders of at least 50% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by Parent, the Company or any Affiliates of either).

"Rescheduled Closing Day" is defined in Section 2.

"Responsible Officer" means any Senior Financial Officer and any other officer of Parent and/or the Company, as the case may be, with responsibility for the administration of the relevant portion of this Agreement.

"Sale and Lease-Back Transaction" means any arrangement with any person providing for the leasing by Parent, the Company or any Subsidiary of any property (except for temporary leases for a term, including any renewal thereof, of not more than one year and except for leases between Parent or the Company and a Subsidiary or between Subsidiaries), which property has been or is to be sold or transferred by Parent, the Company or a Subsidiary.

"SDN List" is defined in Section 5.23.

"Secured Lender Group" means the Collateral Agent, any lender under the Credit Agreement, any "Holder" under the 2002 Note Agreement and any Holder.

"Securities Act" means the Securities Act of 1933, as amended from time to time.

"Security Agreements" means collectively, each Security Agreement executed by Parent or any Subsidiary Guarantor in favor of the Collateral Agent on behalf of the Secured Lender Group, on the date hereof, and each additional Security Agreement executed by Parent or any Subsidiary Guarantor in favor of the Collateral Agent on behalf of the Secured Lender Group, each in substantially the form of Exhibit B-2 hereto, as each of the foregoing may be amended, modified or supplemented from time to time in accordance with its terms.

"Security Interests" means a Lien granted to the Collateral Agent on behalf of the Secured Lender Group in Accounts, Inventory, Equipment, Investment Property, Documents, Instruments, General Intangibles, Chattel Paper, Letter of Credit Rights, Deposit Account and Fixtures, whether now owned or existing or hereafter acquired or arising wherever located, of the Parent and each Subsidiary Guarantor and any and all supporting obligations therefor and all products and procedures thereof.

"Senior Financial Officer" means the chief financial officer, principal accounting officer, treasurer or comptroller of the Company.

"Senior Funded Debt to EBITDA Ratio" means, for any Testing Period, the ratio of (i) Consolidated Senior Funded Debt to (ii) Consolidated EBITDA, in each case on a consolidated basis for Parent and its Subsidiaries for such Testing Period.

"Standard Permitted Liens" means the following:

- (i) Liens for taxes not yet delinquent or Liens for taxes being contested in good faith and by appropriate proceedings for which adequate reserves in accordance with GAAP have been established;
- (ii) Liens in respect of property or assets imposed by law that were incurred in the ordinary course of business, such as carriers', warehousemen's, materialmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, that do not in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of Parent, the Company or any Subsidiary and do not secure any Indebtedness.
- (iii) Liens created by the Security Documents;
- (iv) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 11(i).
- (v) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; and Liens to secure the performance of tenders, statutory obligations, contract bids, government contracts, performance and return-of-money bonds and other similar obligations, incurred in the ordinary course of business (exclusive of obligations in respect of the payment for borrowed money), whether pursuant to statutory requirements, common law or consensual arrangements;
- (vi) Leases or subleases granted in the ordinary course of business to others not interfering in any material respect with the business of Parent, the Company or any Subsidiary and any interest or title of a lessor under any lease not in violation of this Agreement;
- (vii) easements, rights-of-way, zoning or other restrictions, charges, encumbrances, defects in title, prior rights of other Persons, and obligations contained in similar instruments, in each case that do not involve, and are not likely to involve at any future time, either individually or in the aggregate, (A) a substantial and prolonged interruption or disruption of the business activities of Parent, the Company and Subsidiaries, or (B) a Material Adverse Effect;
- (viii) Liens arising from the rights of lessors under leases (including financing statements regarding property subject to lease) permitted pursuant to this Agreement, provided that such Liens are only in respect of the property subject to, and secure only, the respective lease (and any other lease with the same or an affiliated lessor); and
- (ix) rights of consignors of goods, whether or not perfected by the filing of a financing statement under the UCC.

"Subsidiary" means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its



Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a "Subsidiary" is a reference to a Subsidiary of Parent.

"Subsidiary Guarantor" means each Subsidiary a party to a Guaranty Agreement.

"Subordinated Debt" means Indebtedness of Parent, the Company or any Subsidiary which is subordinated, in form and content satisfactory to the Required Holders, to any and all Indebtedness owing to any of the Holders.

"Subordinated Note Agreement" means that certain Amended and Restated Subordinated Note Agreement, dated as of even date herewith, among Parent, the Company and The Prudential Insurance Company of America, amending and restating the Subordinated Note Agreement, dated as of July 3, 2002, among such parties, as it may be amended, modified, restated or supplemented from time to time in accordance with its terms.

"Synthetic Lease" means any lease (i) that is accounted for by the lessee as an Operating Lease, and (ii) under which the lessee is intended to be the "owner" of the leased property for Federal income tax purposes.

"Testing Period" means for any determination a single period consisting of the four consecutive fiscal quarters of Parent and its Subsidiaries then last ended (whether or not such quarters are all within the same fiscal year), except that if a particular provision of this Agreement indicates that a Testing Period shall be of a different specified duration, such Testing Period shall consist of the particular fiscal quarter or quarters then last ended that are so indicated in such provision.

"Total Funded Debt to EBITDA Ratio" means, for any Testing Period, the ratio of (i) Consolidated Total Funded Debt to (ii) Consolidated EBITDA, in each case on a consolidated basis for Parent and its Subsidiaries for such Testing Period.

"2002 Note Agreement" means the Amended and Restated Note Purchase Agreement, dated as of even date herewith, among the Company, Parent and The Prudential Insurance Company of America, amending and restating the Note Purchase Agreement, dated as of July 3, 2002, among such parties, as it may be amended, modified, restated or supplemented from time to time in accordance with its terms.

"Unfunded Current Liability" of any Plan shall mean the amount, if any, by which the actuarial present value of the accumulated plan benefits under the Plan as of the close of its most recent plan year exceeds the fair market value of the assets allocable thereto, each determined in accordance with Statement of Financial Accounting Standards No. 87, based upon the actuarial assumptions used by the Plan's actuary in the most recent annual valuation of the Plan.

EXHIBIT 1

[FORM OF NOTE]

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE OFFERED OR SOLD IN VIOLATION OF SUCH ACT.

GIBRALTAR STEEL CORPORATION OF NEW YORK

5.75% SENIOR SECURED NOTE DUE JUNE 17, 2011

No. [\_\_\_\_\_]

\$ \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_  
PPN[\_\_\_\_\_]

FOR VALUE RECEIVED, the undersigned, Gibraltar Steel Corporation of New York (herein called the "Company"), a corporation organized and existing under the laws of the State of New York, hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \_\_\_\_\_ DOLLARS on June 17, 2011, with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance thereof at the rate of 5.75% per annum from the date hereof, payable quarterly, on the 17th day of March, June, September and December in each year, commencing with the March, June, September and December next succeeding the date hereof, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law on any overdue payment (including any overdue prepayment) of principal, any overdue payment of interest and any overdue payment of any Make-Whole Amount (as defined in the Note Purchase Agreement referred to below), payable quarterly as aforesaid (or, at the option of the registered holder hereof, on demand), at a rate per annum from time to time equal to the greater of (i) 5.75% or (ii) 2.0% over the rate of interest publicly announced by Bank of New York from time to time in New York, New York as its "base" or "prime" rate.

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at Bank of New York or at such other place as the holder of this Note shall have designated by written notice to the Company as provided in the Note Purchase Agreement referred to below.

This Note is one the Senior Secured Notes (herein called the "Notes") issued pursuant to that certain [Note Purchase Agreement, dated as of June 17, 2004] [Amended and Restated Note Purchase Agreement dated as of \_\_\_\_\_, 2005] (as from time to time amended, modified, restated or supplemented the "Note Purchase Agreement"), among Gibraltar Industries, Inc., formerly known as Gibraltar Steel Corporation, the Company and the respective purchasers named therein and is entitled to the benefits thereof. This Note is also entitled to the benefits of each Guaranty Agreement, each Security Agreement and each other Related Document, as each such term is defined in the Note Purchase Agreement. Each holder of this Note will be deemed, by its acceptance hereof, (i) to have agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (ii) to have made the representation set forth in Section 6.2 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

This Note is subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default, as defined in the Note Purchase Agreement, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

GIBRALTAR STEEL CORPORATION  
OF NEW YORK

By \_\_\_\_\_  
Name:  
Title:

EXHIBIT 2

[NOTICE OF ISSUANCE]

To: Prudential Investment Management, Inc.

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

We refer to that certain Amended and Restated Note Purchase Agreement, dated as of \_\_\_\_\_, 2005, among Gibraltar Industries, Inc., formerly known as Gibraltar Steel Corporation, the undersigned and the Purchasers party thereto (as amended, modified or supplemented to date, the "Note Purchase Agreement") Capitalized terms used herein and not defined herein shall have the meanings assigned to them in the Note Purchase Agreement. This is a Notice of Issuance delivered pursuant to Section 2C of the Note Purchase Agreement.

We hereby notify you that we intend to issue and sell to Purchasers, and request that Purchasers purchase from us Final Subsequent Notes in the aggregate principal amount of \$\_\_\_\_\_ on [specify Closing Day].

The proceeds of such Notes shall be used by us for the following general corporate purposes:

\_\_\_\_\_.

The proceeds of such Notes are to be remitted by wire transfer of immediately available funds to the following account:

Account # \_\_\_\_\_  
\_\_\_\_\_ [Name of Bank]  
\_\_\_\_\_ [Address of Bank]  
ABA # \_\_\_\_\_

We hereby certify to you and Purchasers that (i) the representations and warranties contained in Section 5 of the Note Purchase Agreement are true and correct as of the date hereof (or, if any such representation or warranty is expressly stated to be made as of a specific date, as of such date) except to the extent of changes caused by transactions contemplated in the Note Purchase Agreement and (ii) there exists on the date hereof no Event of Default or Default.

GIBRALTAR STEEL CORPORATION  
OF NEW YORK

By \_\_\_\_\_  
Name:  
Title: