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

FORM 10-K

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

For the fiscal year ended December 31, 2005

Commission file number 001-31922

TEMPUR-PEDIC INTERNATIONAL INC.

(Exact name of registrant as specified in its charter)

Delaware	**33-1022198**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

1713 Jaggie Fox Way
Lexington, Kentucky 40511
(Address, including zip code, of registrant's principal executive offices)

Registrant's telephone number, including area code: (800) 878-8889
Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, $0.01 par value	**New York Stock Exchange**

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

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐

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

The aggregate market value of the common equity held by non-affiliates of the registrant on June 30, 2005, computed by reference to the closing price for such stock on the New York Stock Exchange on such date, was approximately $1,449,997,760.

The number of shares outstanding of the registrant's common stock as of February 28, 2006 was 88,286,400 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement for the 2006 Annual Meeting of Stockholders, which is to be filed subsequent to the date hereof, are incorporated by reference into Part III of this Form 10-K.

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Special Note Regarding Forward-Looking Statements

This annual report on Form 10-K, including the information incorporated by reference herein, contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which include information concerning our plans, objectives, goals, strategies, future events, future revenues or performance, capital expenditures, the impact of the adoption of recently issued accounting pronouncements, the Company’s intention to repurchase shares of its common stock under its share repurchase program, the putative securities class action lawsuits and related lawsuits recently filed, the rollout and market acceptance of new products, plans to increase sales and reduce costs, the impact of increases in raw materials costs, the construction of our new manufacturing facility in New Mexico, and other information that is not historical information. Many of these statements appear, in particular, under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in ITEM 7 of Part II of this report. When used in this report, the words “estimates,” “expects,” “anticipates,” “projects,” “plans,” “intends,” “believes” and variations of such words or similar expressions are intended to identify forward-looking statements. These forward-looking statements are based upon our current expectations and various assumptions. There can be no assurance that we will realize our expectations or that our beliefs will prove correct.

There are a number of risks and uncertainties that could cause our actual results to differ materially from the forward-looking statements contained in this report. Important factors that could cause our actual results to differ materially from those expressed as forward-looking statements are set forth in this report, including under the heading “Risk Factors” under ITEM 1A of Part I. There may be other factors that may cause our actual results to differ materially from the forward-looking statements.

All forward-looking statements attributable to us apply only as of the date of this report and are expressly qualified in their entirety by the cautionary statements included in this report. Except as may be required by law, we undertake no obligation to publicly update or revise any of the forward-looking statements, whether as a result of new information, future events, or otherwise.

When used in this report, except as specifically noted otherwise, the terms “Tempur-Pedic International” and the “Company” refer to Tempur-Pedic International Inc. only, and the terms “we,” “our,” “ours” and “us” refer to Tempur-Pedic International Inc. and its consolidated subsidiaries.

PART I

ITEM 1. BUSINESS

General

We are the leading global manufacturer, marketer and distributor of premium mattresses and pillows, which we sell globally in 60 countries under the TEMPUR® and Tempur-Pedic® brands. We believe our premium mattresses and pillows are more comfortable than standard bedding products because our proprietary, pressure-relieving TEMPUR® material is temperature sensitive, has a high density, and conforms to the body to therapeutically align the neck and spine, thus reducing neck and lower back pain, two of the most common complaints about other sleep surfaces.

We sell our premium mattresses and pillows through four distribution channels: Retail (furniture and specialty stores, as well as department stores internationally); Direct (direct response and internet); Healthcare (chiropractors, medical retailers, hospitals and other healthcare markets); and Third party distributors in countries where we do not sell directly through our own subsidiaries. In the United States, we sell a majority of our mattresses and pillows through the Retail channel. For the year ended December 31, 2005, International sales accounted for approximately 36% of our Net sales. In Asia, our Net sales consist primarily of pillows. Internationally, in addition to sales through our Retail channel, we sell a significant amount of our products through the Healthcare channel and Third party distributors. In the four years ended December 31, 2005, our total Net sales grew at a compound annual rate of approximately 39%. We had Net sales of $836.7 million for the year ended December 31, 2005, which represented a 22% growth rate from 2004.

Our principal executive office is located at 1713 Jaggie Fox Way, Lexington, Kentucky 40511 and our telephone number is (800) 878-8889. We were incorporated under the laws of the State of Delaware in September 2002. Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to such reports filed with or furnished to the Securities and Exchange Commission (SEC) pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, are available free of charge on our website at www.tempurpedic.com as soon as reasonably practicable after such reports are electronically filed with the SEC.

Market Opportunity

Global Mattress Market

According to the International Sleep Products Association (ISPA), from 1991 to 2005, mattress unit sales grew in the U.S. at an average of approximately 500,000 units annually, with approximately 22.0 million mattress units sold in the U.S. in 2005. We believe a similar number of mattress units were sold outside the U.S. in 2005. Most standard mattresses are made using innersprings, and most innerspring mattresses are sold for under $1,000, primarily through retail furniture and bedding stores. Alternatives to standard and premium innerspring mattresses include viscoelastic and foam mattresses, airbeds and waterbeds.

The medical community is also a large consumer of mattresses to furnish hospitals and nursing homes. In the U.S., there are approximately 15,400 nursing homes and 5,000 hospitals with a collective bed count in excess of 2.7 million. Medical facilities typically purchase twin size mattresses with standard operating functions such as adjustable height and mechanisms to turn patients to prevent pressure ulcers, or bed sores. We believe demographic trends suggest that as the population ages, the healthcare market for mattresses will continue to grow.

Global Pillow Market

The U.S. pillow market has a traditional and a specialty segment. Traditional pillows are generally made of low cost foam or feathers, other than down. Specialty pillows include all alternatives to traditional pillows, including viscoelastic, foam, sponge rubber and down. We believe the international pillow market is generally the same size as the domestic pillow market, which we estimate to be approximately $1.1 billion.

Our Market Position

We are the leading global manufacturer, marketer and distributor of premium mattresses and pillows. We believe consumer demand for our premium products in the U.S. is being driven primarily by increased housing and home furnishing purchases by the "baby boom" generation; significant growth in our core demographic market as the baby boom generation ages; increased awareness of the health benefits of a better quality mattress; and the shifting consumer preference from firmness to comfort. As consumers continue to prefer alternatives to standard innerspring mattresses, our products become more widely available and as our brand gains broader consumer recognition, we expect that our premium products will continue to attract sales from the standard mattress market.

Competitive Strengths

We believe we are well-positioned for continued growth in our target markets, and that the following competitive strengths differentiate us from our competitors:

Superior Product Offering

Our proprietary TEMPUR® mattresses and pillows conform to the body more naturally and provide better spinal alignment, reduced pressure points, greater relief of lower back and neck pain, and a better quality sleep than traditional bedding products. We believe the benefits of our products have become widely recognized, as evidenced by the more than 25,000 healthcare professionals worldwide who recommend our products and the approval of one or more of our products for purchase or reimbursement by the government healthcare agencies in several European countries. In addition, we continue to leverage our unique and proprietary manufacturing process to develop new products and refine existing products to meet the changing demands and preferences of consumers. Continuing our commitment to innovation, we have recently unveiled our latest TEMPUR® proprietary formula, named TEMPUR-HD™. Our innovative products distinguish us from the major manufacturers of standard innerspring mattresses and traditional pillows in the U.S., which we believe offer generally similar products and must compete primarily on price.

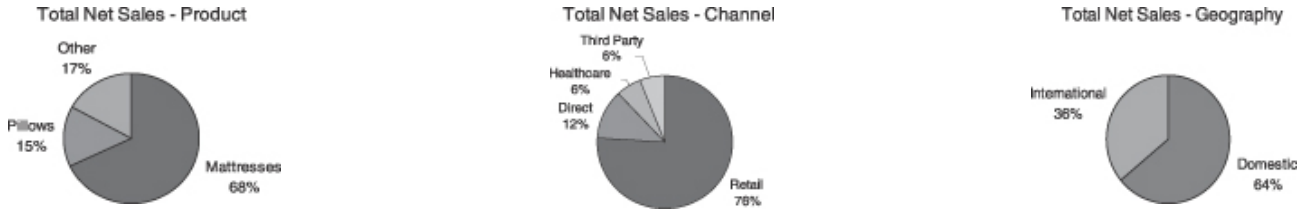
Increasing Global Brand Awareness

We believe consumers in the U.S. and internationally increasingly associate our brand name with premium quality products that enable better overall sleep. We sell our products in 60 countries primarily under the TEMPUR® and Tempur-Pedic® brands. Our TEMPUR® brand has been in existence since 1991 and its global awareness is reinforced by our high level of customer satisfaction. As of January 2006, 'The OriginalBed *by* Tempur-Pedic™', 'The ClassicBed *by* Tempur-Pedic™', 'The DeluxeBed *by* Tempur-Pedic™', 'The CelebrityBed *by* Tempur-Pedic™' and 'The EuroBed *by* Tempur-Pedic™' have been awarded the Arthritis Foundations' 'Ease of Use' Commendation. In December 2004, 'The ComfortPillow *by* Tempur-Pedic'™ was awarded "best buy" status in the premium pillow category by *Consumers Digest*. In September 2004, we were added to the list of "approved" products by *Good Housekeeping* magazine, which earned us the privilege to display the Good Housekeeping Seal across our entire line of mattresses. In April 2003, *Consumers Digest* named one of our mattresses among the eight "best buys" of the mattress industry in the applicable price range. Furthermore, we believe our direct response business and associated multi-channel advertising in our domestic and international markets have enhanced awareness of our brand.

Diversified Product Offerings Sold Globally Through Multiple Distribution Channels

Our diversified product offerings include mattresses, pillows and other products, primarily foundations and adjustable beds, which we sell through all of our channels and represented 68%, 15% and 17%, respectively, of our Net sales for 2005. For the year ended December 31, 2005, our Retail channel represented 76% of Net sales, with our Direct, Healthcare and Third party distributor channels representing 12%, 6% and 6%, respectively. Domestic and International operations generated 64% and 36%, respectively, of Net sales for the year ended December 31, 2005.

A graphic depiction of our Net sales for the year ended December 31, 2005 is as follows:



Vertically Integrated Manufacturing and Supply Chain

We produce all of our proprietary Tempur® material in our own manufacturing facilities in the U.S. and Europe in order to precisely control the key product specifications that go into our products. We believe that our vertical integration, from the manufacture of the Tempur ® material and fabrication and construction of our products through to the marketing, sale and delivery of our products, ensures a high level of quality and performance that is not matched by our competition.

Strong Financial Performance

Our business generates significant free cash flow due to the combination of our growing revenues, strong gross and operating margins, low maintenance capital expenditures and working capital requirements, and limited corporate overhead. Further, our vertically-integrated operations generated an average of approximately $0.6 million in Net sales per employee in 2005. For the year ended December 31, 2005, our Gross profit margin and Net income margin were 51% and 12%, respectively, on Net sales of $836.7 million. In addition, capital expenditures were $84.9 million for the year ended December 31, 2005, of which approximately $73.0 million was related to our New Mexico manufacturing facility. Our strong financial performance gives us the flexibility to invest in our manufacturing operations, enhance our sales force and marketing, invest in information systems and recruit experienced management and other personnel.

Significant Growth Opportunities

We believe we have significant growth opportunities primarily because we can further expand our distribution into our addressable market, and because we expect consumers will continue to shift away from standard innerspring mattresses to non-innerspring premium products such as ours. As of December 31, 2005, our products were sold in approximately 5,310 furniture and bedding retail stores in the U.S., out of a total of approximately 10,000 stores we have identified as appropriate targets. Within this addressable market of approximately 10,000 stores, our plan is to increase our total penetration to a total of 7,000 to 8,000 stores over time. As we deepen our penetration of the furniture retail market, our strategy is to focus our sales force and retail trainers to concentrate more on expanding our business within our established accounts. While we will continue to expand our distribution our focus has shifted to expanding those regions where demographic and buying power metrics indicate that we are under penetrated. Similarly, our products are available in approximately 4,100 furniture retail and department stores internationally, out of a total of approximately 7,000 stores we have identified as appropriate targets. In addition, we currently supply only a small percentage of the approximately 15,400 nursing homes and 5,000 hospitals in the U.S., with an estimated collective bed count in excess of 2.7 million. As consumers continue their shift toward the purchase of non-innerspring mattress products and sleep surfaces we believe we are well positioned to capitalize on this growth opportunity.

Our Products

Our high-quality, high-density, temperature-sensitive TEMPUR® material distinguishes our products from other products in the marketplace. Viscoelastic pressure-relieving material was originally developed by NASA in 1971 in an effort to relieve astronauts of the g-forces experienced during lift-off, and NASA subsequently made

this formula publicly available. The NASA viscoelastic pressure-relieving material originally proved unstable for commercial use. However, after several years of research and development, we succeeded in developing a proprietary formulation and proprietary process to manufacture a stable, durable and commercially viable product. The key feature of our pressure-relieving TEMPUR® material is its temperature sensitivity. It conforms to the body, becoming softer in warmer areas where the body is making the most contact with the pressure-relieving TEMPUR® material and remaining firmer in cooler areas where less body contact is being made. As the material molds to the body's shape, the body is supported in the correct anatomical position with the neck and spine in complete therapeutic alignment. Our pressure-relieving TEMPUR® material also has higher density than other viscoelastic materials, resulting in improved durability and enhanced comfort. In addition, clinical evidence indicates that our products are both effective and cost efficient for the prevention and treatment of pressure ulcers or bed sores, a major problem for elderly and bed-ridden patients.

Mattresses

Our mattresses represented 68% of our worldwide Net sales in 2005 and are our leading product category in growth in recent years. Our mattresses are composed of proprietary multi-layer, heat sensitive, pressure-relieving TEMPUR® material. We offer several mattress models, some of which are covered by one or more patents and/or patent applications. Our two newest mattress offerings, 'The GrandBed *by* Tempur-Pedic™' and 'The RhapsodyBed *by* Tempur-Pedic™', were introduced at The World Market in Las Vegas in January 2006 and will be shipping to retailers in the first half of 2006.

Pillows

Our premium pillow offerings represented 15% of worldwide sales in 2005 and provide plush and pressure-relieving comfort as the temperature sensitive material molds to the body in a variety of styles. Our pillow offerings include 'The ComfortPillow *by* Tempur-Pedic'™, which contains "micro-cushions" of TEMPUR® fill material in a specially designed cover, our classic cervical shaped pillow designed for neck and spine alignment, the Millennium™ pillow with its unique patented design, and the BodyPillow *by* Tempur-Pedic'™ and Supreme™ line of premium pillows introduced in the U.S. in 2004 and 2005.

Other Products

Our other products represented 17% of our worldwide sales in 2005. This category includes foundations used to support our mattress products, adjustable beds, and many other types of offerings including a variety of cushions and other comfort products. In addition, we believe our adjustable beds are the highest quality and most advanced adjustable beds available. Our mattress easily molds to the shape of the base to stay in place and perform better than other mattresses.

Marketing and Sales

While primarily a wholesaler, we market directly to consumers in the U.S. and the United Kingdom. Our marketing strategy is to increase consumer awareness of the benefits of our products and to further associate our brand name with better overall sleep and premium quality products.

Retail

This channel is our fastest growing sales channel and is driven by a sales team dedicated to introducing our products to traditional furniture and bedding retailers. We work with and target furniture retailers, sleep shops, specialty back and gift stores, home stores and international department stores.

We are currently positioned in approximately 9,410 furniture stores worldwide. In the U.S., our retail sales channel is our largest channel, and we currently sell to approximately 5,310 furniture stores and 1,500 specialty retail stores. Our products are now offered in approximately 4,100 furniture stores in Europe and Asia. We plan to build and maintain our channel of specialty retail stores.

Direct

This channel sells products directly to consumers through our call center operations and the internet in the U.S. and the United Kingdom. Our direct response program targets customers in these markets through television, radio, magazine and newspaper product offering advertisements. Most direct response sales orders are taken through responding to in-bound telephone calls, although some orders are also accepted through the internet.

Healthcare

We sell to chiropractors, physical therapists, massage therapists, various other health professionals, as well as medical retailers, sleep clinics and other medical institutions that utilize our products to treat patients or recommend and/or sell them to their clients. Within our healthcare channel, approximately 25,000 healthcare professionals worldwide recommend and/or sell our products to their patients, medical retailers (including pharmacists), and hospitals and nursing homes. In addition, we work closely with hospitals, nursing homes, and medical equipment providers to place our products in facilities where they will be positioned for general public use.

Our Healthcare division in the U.S., which we refer to as Tempur-Pedic Medical, began primarily through indirect sales of our mattresses and pillows through a network of medical professionals, and has grown to include sales to hospitals, nursing homes and medical retailers. Sales to these market segments are now being generated by leading distributors and manufacturers who represent our product lines through their respective sales forces.

Third Party

We have successfully expanded distribution into international markets by utilizing third party distributors. Our approach to these developing markets has allowed us to build sales, marketing and brand awareness with minimal capital risk.

We have entered into written and verbal arrangements with third party distributors located in Eastern Europe, Asia/Pacific, the Middle East, Central and South America and Canada and Mexico. We utilize third party distributors to serve markets that are currently outside the range of our wholly-owned subsidiaries. We have recently made investments in personnel to manage and grow this important form of product distribution, and have restructured our organization to better track and manage our third party distribution arrangements.

Seasonality

A significant portion of our growth in Net sales is attributable to growth in sales in our Domestic retail channel, particularly sales to furniture stores. We believe that our sales of mattresses and pillows to furniture stores are subject to modest seasonality inherent in the bedding industry with sales expected to be generally lower in the second and fourth quarters and higher in the first and third quarters.

Operations

Manufacturing and Related Technology

Our products are currently manufactured at facilities located in Aarup, Denmark and Duffield, Virginia, both of which we own. Much of the sewing and production of mattress and pillow covers is outsourced to third party suppliers.

Our Danish plant has undergone several major plant expansions in the past five years, including an $18.4 million facility expansion in 2004. As a result of this expansion, the Danish plant is now approximately 517,000 square feet. In February 2004, we completed the $21.0 million expansion of our Virginia plant, which is now approximately 540,000 square feet.

In order to continue to increase productivity and expand our manufacturing capacity, we began construction in September 2004 of a third manufacturing facility located in Albuquerque, New Mexico, for which we estimate total construction costs to be approximately $90.0 million. This 750,000 square foot state-of-the-art manufacturing plant will meet demand for our products primarily within the western U.S. as well as well as certain third party distributors. We expect this facility to be completed in the fourth quarter of 2006.

Suppliers

We currently obtain the raw materials used to produce our pressure-relieving TEMPUR® material from outside sources. We currently acquire chemicals and proprietary additives from a number of suppliers with manufacturing locations around the world. We expect to continue these supplier relationships for the foreseeable future. We do not consider ourselves dependent upon any single outside vendor as a source of raw materials and believe that sufficient alternative sources of supply for the same or similar raw materials are available.

During 2005 we were negatively impacted by a rise in certain raw material prices and fuel surcharges for the transportation and delivery of our products that impacted our industry. We have taken steps to mitigate the impact of price increases through productivity and efficiency initiatives, including negotiated discounts for many of our chemical purchases, reverse auctions on certain material purchases, purchasing leverage on consolidated global buying, and implementation of warehousing and shipping efficiencies.

Research and Development

We have invested more than $2.0 million over the past 3 years in a new research and development center located in Duffield, Virginia designed to facilitate detailed product testing and analysis utilizing state-of-the-art technology. In addition to our research and development efforts, we also devote significant efforts to product development as part of our sales and marketing operations. Research and development expenses, excluding product development, were $2.7 million, $2.3 million and $1.5 million in 2005, 2004 and 2003, respectively. In 2006, we plan to increase our spending on research and development efforts in order to continue providing superior and innovative mattress and pillow products to our target markets.

Competition

The mattress and pillow industries are highly competitive. Participants in the mattress and pillow industries have traditionally competed primarily based on price. Our premium mattresses compete with a number of different types of premium and standard mattress alternatives, including innerspring mattresses, foam mattresses, waterbeds, futons, air beds and other air-supported mattresses that are sold through a variety of channels, including furniture stores, specialty bedding stores, department stores, mass merchants, wholesale clubs, telemarketing programs, television infomercials and catalogs. The pillow industry is characterized by a large number of competitors, none of which is dominant.

The standard mattress market in the U.S. is dominated by three large manufacturers of innerspring mattresses with nationally recognized brand names, Sealy, Serta, and Simmons. These three competitors also offer premium innerspring mattresses and collectively have a significant share of the premium mattress market in the U.S. Select Comfort Corporation competes in the specialty mattress market and focuses on the air mattress market segment. The balance of the mattress market in the U.S. is served by a large number of other manufacturers, primarily operating on a regional basis. Many of these competitors and, in particular, the three largest manufacturers of innerspring mattresses named above, have significant financial, marketing and manufacturing resources, strong brand name recognition, and sell their products through broader and more established distribution channels. During the past several years, a number of our competitors, including Sealy, Serta and Simmons, have offered viscoelastic mattress and pillow products.

The international market for mattresses and pillows is generally served by a large number of manufacturers, primarily operating on a regional basis. Some of these manufacturers also offer viscoelastic mattress and pillow products.

Intellectual Property

We hold various U.S. and foreign patents and patent applications regarding certain elements of the design and function of many of our mattress and pillow products. As of December 31, 2005, we had 11 issued U.S. patents, expiring at various points between 2013 and 2021, and 14 U.S. patent applications pending. We also held 45 foreign patents and had 28 foreign patent applications pending.

As of December 31, 2005, we held approximately 200 trademark registrations worldwide, which we believe have significant value and are important to the marketing of our products to retailers. TEMPUR® and Tempur-Pedic® are trademarks registered with the United States Patent and Trademark Office. We have a number of other trademarks, including 'The Celebritybed *by* Tempur-Pedic'™ and our other key product models, Swedish Sleep System® and Tempur-Med®, and our Tempur-Pedic logo is registered. In addition, we have U.S. applications pending for additional marks. Several of our trademarks have been registered, or are the subject of pending applications, in various foreign countries. Each U.S. trademark registration is renewable indefinitely as long as the mark remains in use.

Governmental Regulation

Our operations are subject to state, local and foreign consumer protection and other regulations relating to the mattress and pillow industry. These regulations vary among the states and countries in which we do business. The regulations generally impose requirements as to the proper labeling of bedding merchandise, restrictions regarding the identification of merchandise as "new" or otherwise, controls as to hygiene and other aspects of product handling and sale and penalties for violations. The U.S. Consumer Product Safety Commission recently voted in favor of a new federal fire-resistant standard for mattresses that mirrors the standard set forth in California Technical Bulletin 603. We have developed and implemented product modifications that allow us to meet these new standards. Many foreign jurisdictions also regulate fire retardancy standards, and changes to these standards and changes in our products that require compliance with additional standards would raise similar risks. We are also subject to environmental and health and safety requirements with regards to the manufacture of our products. We have made and will continue to make capital and other expenditures necessary to comply with all these requirements. We believe that we are in substantial compliance with the applicable federal, state, local, and foreign rules and regulations governing our business.

Employees

As of December 31, 2005, we have approximately 1,300 employees, with approximately 600 in the U.S., 300 in Denmark and 400 in the rest of the world. Our employees in Denmark are under a government labor union contract as is normal practice. None of our U.S. employees are covered by a collective bargaining agreement. We believe our relations with our employees are generally good.

ITEM 1A. RISK FACTORS

The following risk factors and other information included in this report should be carefully considered. Please also see "Special Note Regarding Forward-Looking Statements" on page i.

We operate in the highly competitive mattress and pillow industries, and if we are unable to compete successfully, we may lose customers and our sales may decline.

Participants in the mattress and pillow industries compete primarily on price, quality, brand name recognition, product availability and product performance. Our premium mattresses compete with a number of different types of mattress alternatives, including standard innerspring mattresses, viscoelastic mattresses, foam mattresses, air beds and other air-supported mattresses, and waterbeds and futons. These alternative products are sold through a variety of channels, including furniture stores, specialty bedding stores, department stores, mass merchants, wholesale clubs, telemarketing programs, television infomercials and catalogs.

Our largest competitors have significant financial, marketing and manufacturing resources and strong brand name recognition, and sell their products through broad and well established distribution channels. As a result of the significant growth in the sale of viscoelastic mattresses over the last several years, a large number of competitors are aggressively pursuing the viscoelastic mattress market through a variety of channels and a wide range of price points. These competitors include Sealy, Serta and Simmons, who all offer premium priced viscoelastic products claimed to be similar to our products. Any such competition by established manufacturers or new entrants into the market could have a material adverse effect on our business, financial condition and operating results by causing our products to lose market share or causing us to reduce the prices we charge for our products, which would reduce our profitability. The pillow industry is characterized by a large number of competitors, none of which is dominant.

We may be unable to sustain our profitability, which could impair our ability to service our indebtedness and make investments in our business.

Our ability to service our indebtedness depends on our ability to maintain our profitability. Our sales growth slowed in 2005, with net sales growing at a 22% rate from 2004, as compared to a sales growth rate of 43% for 2004 compared to 2003. We may not be able to maintain our profitability on a quarterly or annual basis in future periods. Further, our profitability will depend upon a number of factors, including without limitation:

- the level of competition in the mattress and pillow industry;
- our ability to continue to successfully execute our strategic initiatives;
- our ability to effectively sell our products through our distribution channels in volumes sufficient to drive growth and leverage our cost structure and advertising spending;
- our ability to continuously improve our products to offer new and enhanced consumer benefits, better quality and reduced costs;
- our ability to maintain efficient, timely and cost-effective production and utilization of our manufacturing capacity;
- the efficiency and effectiveness of our advertising campaigns and other marketing programs in building product and brand awareness, driving traffic to our distribution channels and increasing sales;
- our ability to successfully identify and respond to emerging trends in the mattress and pillow industry;
- our ability to maintain public association of our brand with premium products, including overcoming any impact on our brand caused by some of our customers seeking to sell our products at a discount to our recommended price;
- the level of consumer acceptance of our products; and
- general economic conditions and consumer confidence.

Our operating results are increasingly subject to fluctuations, which could adversely affect the market price of our common stock.

A significant portion of our growth in Net sales is attributable to growth in sales in our Domestic retail channel, particularly sales to furniture stores. We believe that our sales of mattresses and pillows to furniture stores are subject to seasonality inherent in the bedding industry with sales expected to be generally lower in the second and fourth quarters and higher in the first and third quarters. Accordingly, our Net sales may be affected by this seasonality as our domestic retail sales channel continues to grow as a percentage of our overall Net sales.

In addition, to seasonal fluctuations, the demand for our premium products can fluctuate significantly based on a number of other factors including general economic conditions and consumer confidence, and the timing of price increases announced by us or our competitors. We believe that as our consumer base continues to expand the average demographics of our consumer base change, with a greater percentage of middle income consumers.

This change in our consumer base makes our business more susceptible to general economic factors that impact disposable income or consumer confidence.

Our advertising expenditures may not result in increased sales or generate the levels of product and brand name awareness we desire and we may not be able to manage our advertising expenditures on a cost-effective basis.

A significant component of our marketing strategy involves the use of direct marketing to generate sales. Future growth and profitability will depend in part on the effectiveness and efficiency of our advertising expenditures, including our ability to:

- create greater awareness of our products and brand name;
- determine the appropriate creative message and media mix for future advertising expenditures;
- effectively manage advertising costs, including creative and media, to maintain acceptable costs per inquiry, costs per order and operating margins; and
- convert inquiries into actual orders.

We are subject to fluctuations in the cost of raw materials, and increases in these costs would reduce our liquidity and profitability.

The major raw materials that we purchase for production are chemicals and proprietary additives. The price and availability of these raw materials are subject to market conditions affecting supply and demand, and prices have risen substantially on certain materials in 2005. Our financial condition and results of operations may be materially and adversely affected by increases in raw material costs to the extent we are unable to pass those higher costs to our customers.

Loss of suppliers and disruptions in the supply of our raw materials could increase our costs of production and reduce our ability to compete effectively.

We currently obtain the raw materials used to produce our pressure-relieving TEMPUR® material from outside sources. We currently acquire chemicals and proprietary additives from a number of suppliers with manufacturing locations around the world. If we were unable to obtain chemicals and proprietary additives from these suppliers, we would have to find replacement suppliers. Any substitute arrangements for chemicals and proprietary additives might not be on terms as favorable to us. We maintain relatively small supplies of our raw materials on-site, and any disruption in the on-going shipment of supplies to us could interrupt production of our products, which could result in a decrease of our sales, or could cause an increase in our cost of sales, and either of these results could decrease our liquidity and profitability. In addition, we continue to outsource the procurement of certain goods and services from suppliers in foreign countries. If we were no longer able to outsource these suppliers, we could source it elsewhere at a higher cost. To the extent we are unable to pass those higher costs to our customers, these costs could reduce our gross profit margin, which could result in a decrease in our liquidity and profitability.

We may face exposure to product liability, which could reduce our liquidity and profitability and reduce consumer confidence in our products.

We face an inherent business risk of exposure to product liability claims if the use of any of our products results in personal injury or property damage. In the event that any of our products prove to be defective, we may be required to recall or redesign those products. We maintain insurance against product liability claims, but such coverage may not continue to be available on terms acceptable to us or be adequate for liabilities actually incurred. A successful claim brought against us in excess of available insurance coverage could impair our liquidity and profitability, and any claim or product recall that results in significant adverse publicity against us, could result in consumers purchasing fewer of our products, which would also impair our liquidity and profitability.

We may be adversely affected by fluctuations in exchange rates, which could affect our results of operations, the costs of our products and our ability to sell our products in foreign markets.

Approximately 36% of our Net sales were denominated in foreign currency for the year ended December 31, 2005. As a multinational company, we conduct our business in a wide variety of currencies and are therefore subject to market risk for changes in foreign exchange rates. We use foreign exchange forward contracts to manage a portion of the exposure to the risk of the eventual net cash inflows and outflows resulting from foreign currency denominated transactions between Tempur-Pedic subsidiaries and their customers and suppliers, as well as between Tempur-Pedic subsidiaries themselves from time to time. The hedging transactions may not succeed in managing our foreign currency exchange rate risk. See "ITEM 7A. Quantitative and Qualitative Disclosures About Market Risk—Foreign Currency Exposures" under Part II of this report.

Foreign currency exchange rate movements also create a degree of risk by affecting the U.S. dollar value of sales made and costs incurred in foreign currencies. We do not enter into hedging transactions to hedge this risk. Consequently, our reported earnings and financial position could fluctuate materially as a result of foreign exchange gains or losses. Our outlook assumes no significant changes in currency values from current rates. Should currency rates change sharply, our results could be negatively impacted. See "ITEM 7A. Quantitative and Qualitative Disclosures About Market Risk—Foreign Currency Exposures" under Part II of this report.

Regulatory requirements may require costly expenditures and expose us to liability.

Our products and our marketing and advertising programs are and will continue to be subject to regulation in the U.S. by various federal, state and local regulatory authorities, including the Federal Trade Commission and the U.S. Food and Drug Administration. In addition, other governments and agencies in other jurisdictions regulate the sale and distribution of our products. Compliance with these regulations may have an adverse effect on our business. For example, compliance with changes in fire resistance laws may be costly and could have an adverse impact on the performance of our products. In February 2006, the U.S. Consumer Product Safety Commission issued new rules relating to fire retardancy standards for the mattress and pillow industry. The State of California adopted new fire retardancy standards beginning in 2005. We have developed product modifications that allow us to meet these new standards. Required product modifications have added cost to our products. Many foreign jurisdictions also regulate fire retardancy standards, and changes to these standards and changes in our products that require compliance with additional standards would raise similar risks.

Our marketing and advertising practices could also become the subject of proceedings before regulatory authorities or the subject of claims by other parties. In addition, we are subject to federal, state and local laws and regulations relating to pollution, environmental protection and occupational health and safety. We may not be in complete compliance with all such requirements at all times. We have made and will continue to make capital and other expenditures to comply with environmental and health and safety requirements. If a release of hazardous substances occurs on or from our properties or any associated offsite disposal location, or if contamination from prior activities is discovered at any of our properties, we may be held liable and the amount of such liability could be material.

An increase in our product return rates or an inadequacy in our warranty reserves could reduce our liquidity and profitability.

Part of our Domestic marketing and advertising strategy in certain Domestic channels focuses on providing up to a 120-day money back guarantee under which customers may return their mattress and obtain a refund of the purchase price. For the year ended December 31, 2005, in the U.S. we had approximately $36.5 million in returns for a return rate of approximately 7% of our Net sales in the U.S. As we expand our sales, our return rates may not remain within our historical levels. An increase in return rates could significantly impair our liquidity and profitability. We also currently provide our customers with a limited, pro-rata 20-year warranty on mattresses sold in the U.S. and a limited 15-year warranty on mattresses sold outside of the U.S. However, as we have only been selling mattresses in significant quantities since 1992, and have released new products in recent years, many are fairly early in their product life cycles. We also provide 2-year to 3-year warranties on pillows.

Because our products have not been in use by our customers for the full warranty period, we rely on the combination of historical experience and product testing for the development of our estimate for warranty claims. However, our actual level of warranty claims could prove to be greater than the level of warranty claims we estimated based on our products' performance during product testing. If our warranty reserves are not adequate to cover future warranty claims, their inadequacy could have a material adverse effect on our liquidity and profitability.

We are subject to risks from our international operations, such as increased costs and the potential absence of intellectual property protection, which could impair our ability to compete and our profitability.

We currently conduct international operations in 14 countries directly and in 46 additional countries through distributors, and we may pursue additional international opportunities. We generated approximately 36% of our Net sales from non-U.S. operations during the year ended December 31, 2005, and international suppliers provided a significant portion of our manufacturing material during this period. Our international operations are subject to the customary risks of operating in an international environment, including complying with foreign laws and regulations and the potential imposition of trade or foreign exchange restrictions, tariff and other tax increases, fluctuations in exchange rates, inflation and unstable political situations, the potential unavailability of intellectual property protection and labor issues.

If we are not able to protect our trade secrets or maintain our trademarks, patents and other intellectual property, we may not be able to prevent competitors from developing similar products or from marketing in a manner that capitalizes on our trademarks, and this loss of a competitive advantage could decrease our profitability and liquidity.

We rely on trade secrets to protect the design, technology and function of our TEMPUR® material and our products. To date, we have not sought U.S. or international patent protection for our principal product formula and manufacturing processes. Accordingly, we may not be able to prevent others from developing viscoelastic material and products that are similar to or competitive with our products. Our ability to compete effectively with other companies also depends, to a significant extent, on our ability to maintain the proprietary nature of our owned and licensed intellectual property. We own several patents on aspects of our products and have patent applications pending on aspects of our manufacturing processes. However, the principal product formula and manufacturing processes for our TEMPUR® material and our products are not patented and we must maintain these as trade secrets in order to protect this intellectual property. We own 11 U.S. patents, and we have 14 U.S. patent applications pending. Further, we own 45 foreign patents, and we have 28 foreign patent applications pending. In addition, we hold approximately 200 trademark registrations worldwide. We own U.S. and foreign registered trade names and service marks and have applications for the registration of trade names and service marks pending domestically and abroad. We also license certain intellectual property rights from third parties.

Although our trademarks are currently registered in the U.S. and registered or pending in 56 foreign countries, they could be circumvented, or violate the proprietary rights of others, or we could be prevented from using them if challenged. A challenge to our use of our trademarks could result in a negative ruling regarding our use of our trademarks, their validity or their enforceability, or could prove expensive and time consuming in terms of legal costs and time spent defending against it. Any loss of trademark protection could result in a decrease in sales or cause us to spend additional amounts on marketing, either of which could decrease our liquidity and profitability. In addition, if we incur significant costs defending our trademarks that could also decrease our liquidity and profitability. In addition, we may not have the financial resources necessary to enforce or defend our trademarks. Furthermore, our patents may not provide meaningful protection and patents may never be issued for our pending patent applications. It is also possible that others could bring claims of infringement against us, as our principal product formula and manufacturing processes are not patented, and that any licenses protecting our intellectual property could be terminated. If we were unable to maintain the proprietary nature of our intellectual property and our significant current or proposed products, this loss of a competitive advantage could result in decreased sales or increased operating costs, either of which would decrease our liquidity and profitability.

In addition, the laws of certain foreign countries may not protect our intellectual property rights and confidential information to the same extent as the laws of the U.S. or the European Union. Third parties, including competitors, may assert intellectual property infringement or invalidity claims against us that could be upheld. Intellectual property litigation, which could result in substantial cost to and diversion of effort by us, may be necessary to protect our trade secrets or proprietary technology or for us to defend against claimed infringement of the rights of others and to determine the scope and validity of others' proprietary rights. We may not prevail in any such litigation, and if we are unsuccessful, we may not be able to obtain any necessary licenses on reasonable terms or at all.

Because we depend on our significant customers, a decrease or interruption in their business with us would reduce our sales and profitability.

Our top five customers, collectively, accounted for 12% of our Net sales for the year ended December 31, 2005. Many of our customer arrangements are by purchase order or are terminable at will at the option of either party. A substantial decrease or interruption in business from our significant customers could result in write-offs or in the loss of future business and could reduce our liquidity and profitability.

In the future, retailers may consolidate, undergo restructurings or reorganizations, or realign their affiliations, any of which could decrease the number of stores that carry our products or increase the ownership concentration in the retail industry. Some of these retailers may decide to carry only a limited number of brands of mattress products, which could affect our ability to sell our products to them on favorable terms, if at all. Our loss of significant customers would impair our sales and profitability and have a material adverse effect on our business, financial condition and results of operations.

We produce all of our products in two manufacturing facilities and have commenced construction on a third manufacturing facility, and unexpected equipment failures, delays in deliveries, catastrophic loss or construction delays may lead to production curtailments or shutdowns.

We manufacture all of our products at our two facilities in Aarup, Denmark and Duffield, Virginia and are in the process of constructing a third facility in Albuquerque, New Mexico. An interruption in production capabilities at these plants as a result of equipment failure could result in our inability to produce our products, which would reduce our sales and earnings for the affected period. In addition, we generally deliver our products only after receiving the order from the customer or the retailer and thus do not hold large inventories. In the event of a stoppage in production at either of our manufacturing facilities, even if only temporary, or if we experience delays as a result of events that are beyond our control, delivery times could be severely affected. For example, our third party carrier could potentially be unable to deliver our products within acceptable time periods due to a labor strike or other disturbance in its business. Any significant delay in deliveries to our customers could lead to increased returns or cancellations and cause us to lose future sales. Any increase in freight charges could increase our costs of doing business and harm our profitability. We have introduced new distribution programs to increase our ability to deliver products on a timely basis, but if we fail to deliver products on a timely basis, we may lose sales which could decrease our liquidity and profitability. Our manufacturing facilities are also subject to the risk of catastrophic loss due to unanticipated events such as fires, explosions or violent weather conditions. We may in the future experience material plant shutdowns or periods of reduced production as a result of equipment failure, delays in deliveries or catastrophic loss.

A deterioration in labor relations could disrupt our business operations and increase our costs, which could decrease our liquidity and profitability.

As of December 31, 2005, we had approximately 1,300 full-time employees, with approximately 600 in the U.S., 300 in Denmark and 400 in the rest of the world. The employees in Denmark are under a government labor union contract, but those in the U.S. are not. Any significant increase in our labor costs could decrease our liquidity and profitability and any deterioration of employee relations, slowdowns or work stoppages at any of our locations, whether due to union activities, employee turnover or otherwise, could result in a decrease in our Net sales or an increase in our costs, either of which could decrease our liquidity and profitability.

The loss of the services of any members of our senior management team could impair our ability to execute our business strategy and as a result, reduce our sales and profitability.

We depend on the continued services of our senior management team. The loss of key personnel could have a material adverse effect on our ability to execute our business strategy and on our financial condition and results of operations. We do not maintain key-person insurance for members of our senior management team other than Robert B. Trussell, Jr.

Our leverage limits our flexibility and increases our risk of default.

As of December 31, 2005, we had $344.5 million in total Long-term debt outstanding. In addition, as of December 31, 2005, our Stockholders' Equity was $226.3 million. In October 2005, we announced an $80.0 million share repurchase program. In January 2006, our Board of Directors amended the share repurchase program to increase the total authorized purchase by $100.0 million resulting in a total authorization of $180.0 million, of which $76.0 million had been spent as of December 31, 2005. Additionally, we spent $42.8 million on share repurchases through February 24, 2006. We intend to fund the repurchase in part through borrowings under our 2005 Senior Credit Facility, which will increase leverage. Our degree of leverage could have important consequences to our investors, such as:

- limiting our ability to obtain in the future additional financing we may need to fund future working capital, capital expenditures, product development, acquisitions or other corporate requirements; and
- requiring the dedication of a substantial portion of our cash flow from operations to the payment of principal and interest on our debt, which will reduce the availability of cash flow to fund working capital, capital expenditures, product development, acquisitions and other corporate requirements.

In addition, the instruments governing our debt contain financial and other restrictive covenants, which limit our operating flexibility and could prevent us from taking advantage of business opportunities. In addition, our failure to comply with these covenants may result in an event of default. If such event of default is not cured or waived, we may suffer adverse effects on our operations, business or financial condition, including acceleration of our debt.

We are vulnerable to interest rate risk with respect to our debt, which could lead to an increase in interest expense.

We are subject to interest rate risk in connection with our issuance of variable rate debt under our 2005 Senior Credit Facility. Interest rate changes could increase the amount of our interest payments and thus, negatively impact our future earnings and cash flows. We estimate that our annual interest expense on our floating rate indebtedness would increase by $2.5 million for each 1% increase in interest rates until IBOR reaches 5%. After IBOR reaches 5% our annual interest expense on the unhedged portion of our floating rate indebtedness would increase by $1.9 million for each 1% increase in interest rates. See "ITEM 7A. Quantitative and Qualitative Disclosures About Market Risk—Interest Rate Risk" under Part II of this report.

Allegations of the possibility of price fixing in the mattress industry could increase our costs or otherwise adversely affect our operations.

Our retail pricing policies are subject to antitrust regulations in the U.S. and abroad. If antitrust regulators in any jurisdiction in which we do business initiate investigations into or challenge our pricing or advertising policies, our efforts to respond could force us to divert management resources and we could incur significant unanticipated costs. If such an investigation were to result in a charge that our practices or policies were in violation of applicable antitrust laws or regulations, we could be subject to significant additional costs of defending such charges in a variety of venues and, ultimately, if there were a finding that we were in violation of antitrust laws or regulations, there could be an imposition of fines, damages for persons injured, as well as injunctive or other relief. Any requirement that we pay fines or damages could decrease our liquidity and profitability, and any investigation that requires significant management attention or causes us to change our business practices could disrupt our operations, also resulting in a decrease in our liquidity and profitability.

Our stock price is likely to continue to be volatile, your investment could decline in value, and we may incur significant costs from class action litigation.

The trading price of our common stock is likely to continue to be volatile and subject to wide price fluctuations. The trading price of our common stock may fluctuate significantly in response to various factors, including:

- actual or anticipated variations in our quarterly operating results, including those resulting from seasonal variations in our business;
- introductions or announcements of technological innovations or new products by us or our competitors;
- disputes or other developments relating to proprietary rights, including patents, litigation matters, and our ability to patent our products and technologies;
- changes in estimates by securities analysts of our financial performance;
- conditions or trends in the specialty bedding industry, or the mattress industry generally;
- additions or departures of key personnel;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures or capital commitments;
- announcements by our competitors of their quarterly operating results or announcements by our competitors of their views on trends in the bedding industry;
- regulatory developments in the U.S. and abroad;
- economic and political factors; and
- public announcements or filings with the SEC indicating that significant stockholders, directors or officers are selling shares of common stock.

In addition, the stock market in general has experienced significant price and volume fluctuations that have often been unrelated or disproportionate to operating performance. These broad market factors may seriously harm the market price of our common stock, regardless of our operating performance.

In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted. A securities class action suit against us could result in potential liabilities, substantial costs, and the diversion of our management's attention and resources, regardless of the outcome. See Part I, ITEM 3, Legal Proceedings.

Future sales of our common stock may depress our stock price.

The market price of our common stock could decline as a result of sales of substantial amounts of our common stock in the public market, or the perception that these sales could occur. In addition, these factors could make it more difficult for us to raise funds through future offerings of common stock. As of February 28, 2006, there were 88.3 million shares of our common stock outstanding. All of our shares of our common stock are freely transferable without restriction or further registration under the Securities Act of 1933, except for certain shares of our common stock which were purchased by our executive officers, directors, principal stockholders, and some related parties. During 2005 our two largest stockholders, private equity funds that invested in the Company in 2002 in connection with the acquisition of our predecessor, made partial distributions to their investors totaling approximately 18.0 million shares of our common stock, and one of these stockholders also sold 5.3 million shares in June 2005. In February 2006, one of these stockholders made an additional distribution of the 5.8 million shares of remaining common stock that they held in the Company. Our largest stockholder continues to hold 21.9 million shares of our common stock and may choose to make additional distributions or sales of our common stock in the future.

In addition, on December 24, 2003, we registered up to 14,982,532 shares of our common stock reserved for issuance upon the exercise of options granted or reserved for grant under our 2002 Stock Option Plan, our 2003 Equity Incentive Plan and our 2003 Employee Stock Purchase Plan. Stockholders can sell these shares in the public market upon issuance, subject to restrictions under the securities laws and any applicable lock-up agreements.

Our current principal stockholder owns a large percentage of our common stock and could limit you from influencing corporate decisions.

As of February 28, 2006, our executive officers, directors, and our largest stockholder, and their respective affiliates own, in the aggregate, approximately 32% of our outstanding common stock on a fully diluted basis, after giving effect to the vesting of all unvested options. These stockholders, as a group, are able to influence all matters requiring approval by our stockholders, including mergers, sales of assets, the election of all directors, and approval of other significant corporate transactions, in a manner with which you may not agree or that may not be in your best interest.

Provisions of Delaware law and our charter documents could delay or prevent an acquisition of us, even if the acquisition would be beneficial to you.

Provisions of Delaware law and our certificate of incorporation and by-laws could hamper a third party's acquisition of us, or discourage a third party from attempting to acquire control of us. You may not have the opportunity to participate in these transactions. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock.

These provisions include:

- our ability to issue preferred stock with rights senior to those of the common stock without any further vote or action by the holders of our common stock;
- the requirements that our stockholders provide advance notice when nominating our directors; and
- the inability of our stockholders to convene a stockholders' meeting without the chairperson of the board, the president, or a majority of the board of directors first calling the meeting.

We do not anticipate paying dividends on our capital stock in the foreseeable future.

We do not anticipate paying any dividends in the foreseeable future, although as discussed elsewhere in this report we have adopted a share repurchase program. In addition, the terms of the instruments governing our existing debt and any future debt or credit facility may preclude us from paying any dividends.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

We operate in 60 countries and have wholly-owned subsidiaries in 14 countries, including our wholly-owned subsidiaries that own our manufacturing facilities in Denmark and Virginia. The following table sets forth certain information regarding our principal facilities at December 31, 2005.

We believe that our existing properties are suitable for the conduct of our business, are adequate for our present needs and, together with the manufacturing facility we are constructing in Albuquerque, New Mexico, will be adequate to meet our future needs. As described in ITEM 7. Management's Analysis and Discussion of Financial Condition and Results of Operations, we operate in two business segments, Domestic and International.

Our Domestic operating segment consists of our U.S. manufacturing facilities and our Corporate office operating expenses. Our International operating segment consists of our manufacturing facility in Denmark.

Name/Location	Approximate Square Footage	Title	Type of Facility
Tempur Production USA, Inc. Duffield, Virginia	540,000	Owned	Manufacturing
Tempur Production USA, Inc. Albuquerque, New Mexico	750,000	Leased (until 2035)	Manufacturing (Under Construction)
Dan-Foam ApS Aarup, Denmark	517,000	Owned	Manufacturing
Tempur-Pedic, Inc. Lexington, Kentucky	72,000	Leased (until 2009)	Office and Warehouse
Tempur UK Ltd. Tempur House Middlesex, UB3 1BE, United Kingdom	56,650	Leased (until 2010 with a cancellation option in 2007)	Office and Warehouse
Tempur Deutschland GmbH Steinhagen, Germany	121,277	Owned	Office and Warehouse

In addition to the properties listed above, we have 17 facilities in 12 countries under leases with one to ten year terms. The manufacturing facility under construction in Albuquerque, New Mexico is leased as part of the related industrial revenue bond financing completed in 2005. We have an option to repurchase the property for one dollar upon repayment of the financing.

ITEM 3. LEGAL PROCEEDINGS

Between October 7, 2005 and November 21, 2005, five complaints were filed against the Company and certain of its directors and officers in the United States District Court for the Eastern District of Kentucky (Lexington Division) purportedly on behalf of a class of shareholders who purchased the Company's stock between April 22, 2005 and September 19, 2005. On December 29, 2005, the court consolidated these five actions (the "Securities Law Action"). Lead plaintiffs filed a consolidated complaint on February 27, 2006. In their consolidated complaint, lead plaintiffs assert claims arising under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. Lead plaintiffs allege that certain of the Company's public disclosures regarding its financial performance between April 22, 2005 and September 19, 2005 were false and/or misleading. The principal allegation set forth in the Securities Law Action is that the Company did not disclose the impact of competition on its prospects. The plaintiffs seek compensatory damages, costs, fees and other relief within the Court's discretion. We strongly believe that the Securities Law Action lacks merit, and we intend to defend against the claims vigorously. However, due to the inherent uncertainties of litigation, we cannot predict the outcome of the Securities Law Action at this time, and we can give no assurance that these claims will not have a material adverse affect on our financial position or results of operations.

On November 10, 2005 and December 15, 2005, complaints were filed in the state courts of Delaware and Kentucky, respectively, against certain officers and directors of the Company, purportedly derivatively on behalf of the Company (the "*Derivative Complaints*"). The Derivative Complaints assert that the named officers and directors breached their fiduciary duties when they allegedly sold the Company's securities on the basis of material non-public information in 2005. The Delaware derivative complaint also asserts a claim for breach of fiduciary duty with respect to the disclosures that also are the subject of the Securities Law Action described above. On December 14, 2005 and January 26, 2006, respectively, the Delaware court and Kentucky court stayed these derivative actions pending the outcome of the motion to dismiss that defendants intend to file in the Securities Law Action. The Company is also named as a nominal defendant in the Derivative Complaints, although the actions are derivative in nature and purportedly asserted on behalf of the Company. The Company is in the process of evaluating these claims.

We are involved in various other legal proceedings incident to the ordinary course of our business. We believe that the outcome of all such pending legal proceedings in the aggregate will not have a materially adverse effect on our business, financial condition, liquidity, or operating results.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of 2005.

EXECUTIVE OFFICERS OF THE REGISTRANT

Certain information concerning our executive officers as of the date of this report follows. There are no family relationships between any of the persons listed below, or between any of such persons and any of our directors or any persons nominated or chosen by us to become a director or executive officer.

Name	Age	Position
Robert B. Trussell, Jr.	54	Chief Executive Officer
H. Thomas Bryant	58	President
David Montgomery	44	Executive Vice President and President of International Operations
Matthew D. Clift	46	Executive Vice President of Global Operations
Dale E. Williams	43	Senior Vice President, Chief Financial Officer, and Secretary
Jeffrey B. Johnson	41	Vice President, Corporate Controller, Chief Accounting Officer and Assistant Secretary

Robert B. Trussell, Jr. is the Chief Executive Officer of Tempur-Pedic International and a member of Tempur-Pedic International's board of directors. He has served in this capacity at Tempur-Pedic International or its predecessor since 2000, and from 2000 to December 2004, Mr. Trussell served as Tempur-Pedic International President. From 1992 to 2000, Mr. Trussell served as President of Tempur-Pedic, Inc., one of the predecessors to Tempur-Pedic International. Prior to joining Tempur-Pedic International, Mr. Trussell was general partner of several racing limited partnerships that owned racehorses in England, France and the U.S. He was also the owner of several start-up businesses in the equine lending and insurance business. Mr. Trussell received his B.S. degree from Marquette University. Mr. Trussell will retire as Chief Executive Officer of Tempur-Pedic International effective at the 2006 annual meeting of stockholders (the Annual Meeting), but, if re-elected by the stockholders, will remain a member of Tempur-Pedic International's Board of Directors and will assume the position of Vice Chairman of the Board of Directors.

H. Thomas Bryant is the President of Tempur-Pedic International Inc. and will assume the position of Chief Executive Officer effective at the Annual Meeting. Mr. Bryant joined Tempur-Pedic International in July 2001. From July 2001 to December 2004, Mr. Bryant served as Executive Vice President and President of North American Operations. In December 2004, Mr. Bryant was promoted to President of Tempur-Pedic International. Prior to joining Tempur-Pedic International, from 1998 to 2001, Mr. Bryant was the President and Chief Executive Officer of Stairmaster Sports & Medical Products, Inc. From 1989 to 1997, Mr. Bryant served in various senior management positions at Dunlop Maxfli Sports Corporation, most recently as President. Prior to that, Mr. Bryant spent 15 years in various management positions at Johnson & Johnson. Mr. Bryant received his B.S. degree from Georgia Southern University.

David Montgomery joined Tempur-Pedic International in February 2003 and serves as Executive Vice President and President of International Operations, with responsibilities including marketing and sales. From 2001 to November 2002, Mr. Montgomery was employed by Rubbermaid, Inc., where he served as President of Rubbermaid Europe. From 1988 to 2001, Mr. Montgomery held various management positions at Black & Decker Corporation, most recently as Vice President of Black & Decker Europe, Middle East and Africa. Mr. Montgomery received his B.A. degree, with honors, from L' Ecole Superieure de Commerce de Reims, France and Middlesex Polytechnic, London.

Matthew D. Clift joined Tempur-Pedic International in December 2004 and serves as Executive Vice President of Global Operations, with responsibilities including manufacturing and research and development. From 1991 to December 2004, Mr. Clift was employed by Lexmark International where he most recently served as Vice President and General Manager of the consumer printer division. From 1981 to 1991, Mr. Clift was employed by IBM Corporation and held several management positions in research and development and manufacturing. Mr. Clift obtained his B.S. degree in chemical engineering from the University of Kentucky.

Dale E. Williams joined Tempur-Pedic International in July 2003 and serves as Senior Vice President, Chief Financial Officer and Secretary. From 2001 to September 2002, Mr. Williams served as Vice President and Chief Financial Officer of Honeywell Control Products, a division of Honeywell International, Inc. From September 2002, when he left Honeywell in connection with a reorganization, to July 2003, Mr. Williams received severance from Honeywell and was not employed. From 2000 to 2001, Mr. Williams served as Vice President and Chief Financial Officer of Saga Systems, Inc./Software AG, Inc. Prior to that, Mr. Williams spent 15 years in various management positions at General Electric Company, most recently as Vice President and Chief Financial Officer of GE Information Services, Inc. Mr. Williams received his B.A. degree in finance from Indiana University.

Jeffrey B. Johnson joined Tempur-Pedic International in November 1999 and serves as Vice President, Corporate Controller and Chief Accounting Officer. From 1993 to 1999, Mr. Johnson was an experienced manager at Arthur Andersen in the audit and business advisory services division. Mr. Johnson is a certified public accountant and a certified management accountant and holds a B.S. degree, with honors, from the University of Kentucky and an M.B.A. degree, with honors, from the University of Chicago.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market for Registrant's Common Equity

Our sole class of common equity is our $0.01 par value common stock, which is trading on the New York Stock Exchange (NYSE) under the symbol "TPX." Trading in our common stock commenced on the NYSE on December 18, 2003. Prior to that time, there was no public trading market for our common stock.

The following table sets forth the high and low sales prices per share, at closing, of our common stock as reported by the NYSE for the fiscal periods indicated.

	High	Low
Fiscal 2004		
First Quarter	$17.90	$15.30
Second Quarter	$16.95	$12.28
Third Quarter	$15.19	$11.56
Fourth Quarter	$21.20	$15.25
Fiscal 2005		
First Quarter	$21.46	$17.73
Second Quarter	$24.63	$18.57
Third Quarter	$23.82	$10.98
Fourth Quarter	$12.97	$ 9.72

In connection with our recapitalization in August 2003, we distributed approximately $160.0 million to our equityholders as a return of capital. Aside from this distribution, we have not declared or paid any dividends on our common stock. As discussed elsewhere in this report, we have adopted a share repurchase program. Other than purchases of our common stock pursuant to our share repurchase program, we currently intend to retain our future earnings, if any, to support the growth and development of our business, and we do not anticipate paying any dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, and other factors that our board of directors may deem relevant.

The Securities and Exchange Commission declared our first registration statement, which we filed on Form S-1 (Registration No. 333-109798) under the Securities Act of 1933 in connection with the initial public offering of our common stock, effective on December 17, 2003.

Our initial public offering was completed on December 23, 2003, at a price to the public of $14.00 per share, with an aggregate offering price of $301.9 million. The sale of shares of common stock by us resulted in gross proceeds of $87.5 million, $5.7 million of which we applied to underwriting discounts and commissions and approximately $2.8 million of which we applied to other offering expenses. As a result, we received net proceeds of approximately $79.0 million.

Related Stockholder Matters

The information under the section entitled "Equity Compensation Plan Information" in the Proxy Statement is incorporated herein by reference.

Issuer Purchases of Equity Securities

The following table sets forth our purchases of equity securities for the year ended December 31, 2005:

Period	(a) Total number of shares purchased	(b) Average Price Paid per Share	(c) Total number of shares purchased as part of publicly announced plans or programs	(d) Maximum number of shares (or approximate dollar value) of shares that may yet be purchased under the plans or programs (in millions)
October 1, 2005 - October 31, 2005	1,826,100	$ 10.82	1,826,100	$ 60.2
November 1, 2005 - November 30, 2005	3,277,000	$ 10.73	3,277,000	$ 25.1
December 1, 2005 - December 31, 2005	1,736,800	$ 12.14	1,736,800	$ 4.0
Total	6,839,900		6,839,900	

On October 18, 2005, our Board of Directors authorized the repurchase of up to $80.0 million of the common stock. Share repurchases under this program were made through open market transactions, negotiated purchases or otherwise, at times and in such amounts as we deemed appropriate. During 2005, we repurchased 6.8 million shares, at a total cost of $76.0 million. We funded these share repurchases from borrowings under the 2005 Senior Credit Facility and funds from operations.

On January 25, 2006, our Board of Directors amended the share repurchase program described above to increase the total authorization by an additional $100.0 million resulting in a total authorization to purchase up to $180.0 million of Tempur-Pedic International Inc.'s common stock. Accordingly, as of January 25, 2006, because we had already purchased $76.0 million of shares under the program, we were authorized to purchase up to $104.0 million of our common stock. Since January 25, 2006, we have repurchased an additional 3.7 million shares at a total cost of $42.8 million through February 24, 2006. The share repurchases have been and will continue to be funded from borrowings under the 2005 Senior Credit Facility and funds from operations.

ITEM 6. SELECTED FINANCIAL DATA

The following table sets forth our selected historical consolidated financial and operating data for the periods indicated. Tempur World, Inc. was formed on January 1, 2000 to combine the manufacturing facilities and the worldwide distribution capabilities of all Tempur products, and our predecessor company for the period from January 1, 2001 to October 31, 2002 is Tempur World, Inc. Tempur-Pedic International was formed in 2002 by TA Associates, Inc. (TA) and Friedman Fleischer & Lowe, LLC (FFL) to acquire Tempur World, Inc., or Tempur World. This acquisition occurred effective November 1, 2002 and is sometimes referred to herein as the "Tempur Acquisition". We completed the Tempur Acquisition (which we accounted for using the purchase method of accounting) as of November 1, 2002. As a result of adjustments to the carrying value of assets and liabilities pursuant to the acquisition, the financial position and results of operations for periods subsequent to the Tempur Acquisition are not comparable to those of our predecessor.

We have derived our statements of income and balance sheet data as of and for the years ended December 31, 2005, 2004 and 2003, and for the two months ended December 31, 2002 from our audited financial statements. We have derived the statement of income and balance sheet data as of and for the ten months ended October 31, 2002, and the year ended December 31, 2001 from the audited financial statements of our predecessor company. Our financial statements as of December 31, 2005 and 2004 and for each of the three years in the period ended December 31, 2005 are included elsewhere in this report.

	Tempur-Pedic International Inc.				Predecessor	
	2005	2004	2003	Period From November 1, 2002 to December 31, 2002	Period From January 1, 2002 to October 31, 2002	2001
Statement of Income Data:						
Net sales	**$ 836,732**	$ 684,866	$ 479,135	$ 60,644	$ 237,314	$221,514
Cost of sales[1]	**412,790**	323,852	223,865	37,812	110,228	107,569
Gross profit	**423,942**	361,014	255,270	22,832	127,086	113,945
Operating expenses[2]	**233,088**	209,979	158,196	23,815	86,693	83,574
Operating income/(loss)	**190,854**	151,035	97,074	(983)	40,393	30,371
Interest expense, net	**(20,264)**	(23,550)	(20,521)	(2,955)	(6,292)	(6,555)
Other income/(expense)[3]	**(4,118)**	(5,298)	(15,351)	1,331	(1,724)	(316)
Income/(loss) before income taxes	**166,472**	122,187	61,202	(2,607)	32,377	23,500
Income taxes	**67,143**	47,180	23,627	640	12,436	11,643
Net income/(loss)	**99,329**	75,007	37,575	(3,247)	19,941	11,857
Preferred stock dividend	**—**	—	—	1,958	1,238	345
Net income/(loss) available to common stockholders	**$ 99,329**	$ 75,007	$ 37,575	$ (5,205)	$ 18,703	$ 11,512
Balance Sheet Data (at end of period):						
Cash and cash equivalents	**$ 17,855**	$ 28,368	$ 14,230	$ 12,654	$ 6,380	$ 7,538
Restricted cash[4]	**—**	—	60,243	—	—	—
Total Assets	**702,311**	639,623	620,349	448,593	199,641	176,841
Total senior debt	**193,056**	192,171	226,522	148,121	88,817	104,352
Total debt[5]	**344,481**	289,671	376,522	198,352	89,050	106,023
Redeemable preferred stock	**—**	—	—	—	15,331	11,715
Total Stockholders' Equity	**$ 226,329**	$ 213,621	$ 122,709	$ 151,606	$ 39,895	$ 16,694
Other Financial and Operating Data (GAAP):						
Depreciation and amortization[6]	**$ 27,882**	$ 28,519	$ 23,975	$ 3,306	$ 10,383	$ 10,051
Net cash provided by operating activities	**$ 102,249**	$ 76,966	$ 46,950	$ 12,385	$ 22,706	$ 19,716
Net cash used by investing activities	**$ (86,584)**	$ (38,351)	$ (71,107)	$ (1,859)	$ (4,646)	$ (34,862)
Net cash (used) provided by financing activities	**$ (19,955)**	$ (28,507)	$ 26,574	$ (4,221)	$ (19,702)	$ 12,593
Diluted earnings (loss) per share	**$ .97**	$ 0.73	$ 0.39	$ (0.67)	N/A	N/A
Capital expenditures	**$ 84,881**	$ 38,419	$ 32,597	$ 1,961	$ 9,175	$ 35,241
Other Financial and Operating Data (non-GAAP):						
Ratio of earnings to fixed charges[7]	**7.9x**	5.9x	3.6x	—	5.1x	4.3x
Number of pillows sold, net[8]	**2,535,981**	2,896,786	2,751,221	—	—	—
Number of mattresses sold, net[8]	**685,316**	547,705	367,189	—	—	—

(1) Includes $9.8 million in non-cash charges for the two months ended December 31, 2002 relating to the step-up in inventory as of November 1, 2002 relating to the Tempur Acquisition.

(2) Includes $6.9 million, $9.4 million, and $9.3 million in non-cash charges for the years ended December 31, 2005, 2004, and 2003, respectively. These amounts are comprised of $4.0 million, $4.2 million, and $5.1 million in amortization of definite-lived intangibles in 2005, 2004, and 2003, respectively; and $2.9 million, $5.2 million, and $4.2 million in non-cash stock-based compensation expense relating to restricted stock units, stock option grants, and acceleration in 2005, 2004, and 2003, respectively.

(3) Includes $5.4 million in debt extinguishment charges for the redemption premium related to the redemption of $52.5 million of Senior Subordinated Notes for the year ended December 31, 2004. For the year ended December 31, 2003, includes $13.7 million in debt extinguishment charges relating to the write-off of deferred financing fees, the write-off of original issue discount and prepayment penalties in connection with the Recapitalization in August 2003.

(4) As of December 31, 2003, we had approximately $60.2 million in restricted cash for the redemption of an aggregate principal amount of $52.5 million of Senior Subordinated Notes, the payment of a redemption premium of approximately $5.4 million and accrued interest expense of approximately $2.4 million, which was paid in January 2004.

(5) Includes $52.5 million in aggregate principal amount of Senior Subordinated Notes redeemed on January 23, 2004 for the year ended December 31, 2003.

(6) Includes $2.9 million, $5.2 million, and $4.2 million in non-cash stock-based compensation expense related to restricted stock units, stock option grants, and acceleration in 2005, 2004, and 2003, respectively.

(7) The ratio of earnings to fixed charges for the period from November 1, 2002 to December 31, 2002 is less than one to one. Earnings deficiency for this period is $5.4 million.

(8) Number of units sold, net is after the consideration of returned mattresses and pillows and excludes units shipped to fulfill warranty claims and promotional activities.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with "Selected Financial Data" and the audited consolidated financial statements and accompanying notes thereto included elsewhere in this report. Unless otherwise noted, all of the financial information in this report is consolidated financial information for Tempur-Pedic International Inc. or its predecessor. The forward-looking statements in this discussion regarding the mattress and pillow industries, our expectations regarding our future performance, liquidity and capital resources and other non-historical statements in this discussion are subject to numerous risks and uncertainties. See "Special Note Regarding Forward-Looking Statements" and "Part I—ITEM 1A.Risk Factors." Our actual results may differ materially from those contained in any forward-looking statements.

Overview

General—We are the leading global manufacturer, marketer and distributor of premium mattresses and pillows, which we sell globally in 60 countries primarily under the TEMPUR® and Tempur-Pedic® brands. We believe our premium mattresses and pillows are more comfortable than standard bedding products because our proprietary pressure-relieving TEMPUR® material is temperature sensitive, has a high density and conforms to the body to therapeutically align the neck and spine, thus reducing neck and lower back pain, two of the most common complaints about other sleep surfaces.

Business Segment Information—We have two operating business segments: Domestic and International. These reportable segments are strategic business units that are managed separately.

The Domestic operating segment consists of our U.S. manufacturing facility, whose customers include our U.S. distribution subsidiary and certain North and South American third party distributors. The International segment consists of our manufacturing facility in Denmark, whose customers include all of our distribution

subsidiaries and third party distributors outside the Domestic segment. We evaluate segment performance based on Net sales and Operating income. For the purpose of this Management's Discussion and Analysis of Financial Condition and Results of Operations, our Corporate office operating expenses and certain amounts for goodwill and other assets that are carried at the holding company level are included in the Domestic operating segment.

Economic and Industry Trends—According to ISPA, from 1991 to 2005, mattress unit sales grew in the U.S. at an average of approximately 500,000 units annually, with approximately 22.0 million mattress units sold in the U.S. in 2005. We believe a similar number of mattress units were sold outside the U.S. in 2005.

For a further discussion of factors that could impact operating results, see the section entitled "Factor That May Affect Future Performance" included within this section and "Risk Factors" in ITEM 1A, which are incorporated herein by reference.

Strategy and Outlook

Our long-term goal is to become the world's largest bedding company. In order to achieve this goal, we expect to continue to pursue certain key strategies in 2006:

- We currently intend to maintain our focus primarily on premium mattresses and pillows and to regularly introduce new products. In September 2005, we launched a new pillow collection exclusively for the Japanese market, the same market where we unveiled a new futon product in January 2005. We launched our Scandinavian Bed Collection throughout Europe, which was previously only available in the Nordic markets. Over the past year in the U.S., we have also launched 'The EuroBed *by* Tempur-Pedic™', 'The OriginalBed *by* Tempur-Pedic™', and 'The BodyPillow *by* Tempur-Pedic™'. At The World Market in Las Vegas in January 2006, we launched 'The GrandBed *by* Tempur-Pedic™' and the 'The RhapsodyBed *by* Tempur-Pedic™' as well as a newly updated version of 'The ClassicBed *by* Tempur-Pedic™'. These new product offerings, launched in January 2006, will be coming to retail in the first half of 2006.
- We plan to continue to invest in increasing our global brand awareness through targeted marking and advertising campaigns that further associate our brand name with better overall sleep and premium quality products.
- We plan to continue to extend our presence on a targeted basis in retail stores in the U.S. and internationally.
- We plan to continue to invest in our operating infrastructure to meet the requirements of our growing business, including investments in our research and development capabilities.

Results of Operations

Key financial highlights for 2005 were as follows:

- Our consolidated net sales rose 22% to $836.7 million in 2005 from $684.9 million during 2004. Retail channel sales worldwide increased 31%. Sales in the U.S. retail channel grew 30%. Sales in the international retail channel increased 31%. Our retail channel continues to be our largest and fastest growing channel by far and the principal driver of our growth in recent years. Growth in all our other channels was flat or slightly down in 2005.
- Our operating income increased $39.9 million or 26% to $190.9 million in 2005. Operating income as a percentage of Net sales was 23% for 2005 and 22% for 2004.
- Our Board of Directors authorized an $80.0 million share repurchase program in October 2005. We repurchased more than 6.8 million shares of our common stock at a total cost of $76.0 million during the fourth quarter. In January 2006, our Board of Directors increased our authorization by an additional $100.0 million to a total of $180.0 million.

- The Company completed the repatriation of $155.7 million of foreign earnings repatriated during the year related to the American Jobs Creation Act of 2004.

The following table sets forth the various components of our Consolidated Statements of Income, and expresses each component as a percentage of Net sales:

(In millions, except percentages and earnings per share)	Year Ended December 31, 2005		2004		2003	
Net sales	**$836.7**	**100%**	$684.9	100%	$479.1	100%
Cost of sales	**412.8**	**49**	323.9	47	223.8	47
Gross profit	**423.9**	**51**	361.0	53	255.3	53
Selling and marketing expenses	**162.2**	**20**	138.7	21	106.7	22
General and administrative and other	**70.8**	**8**	71.3	10	51.5	11
Operating income	**190.9**	**23**	151.0	22	97.1	20
Interest expense, net	**(20.3)**	**(2)**	(23.5)	(3)	(20.5)	(4)
Loss on debt extinguishment	**(4.2)**	**(1)**	(5.4)	(1)	(13.7)	(3)
Other income (expense), net	**0.1**	**—**	0.1	—	(1.7)	—
Income before income taxes	**166.5**	**20**	122.2	18	61.2	13
Income tax provision	**67.2**	**8**	47.2	7	23.6	5
Net income	**$ 99.3**	**12%**	$ 75.0	11%	$ 37.6	8%
Earnings per share:						
Diluted	**$ 0.97**		$ 0.73		$ 0.39	
Weighted average shares outstanding:						
Basic	**98.0**		97.7		11.3	
Diluted	**102.1**		102.9		95.3	

Year Ended December 31, 2005 Compared with Year Ended December 31, 2004

We generate sales through four distribution channels: Retail, Direct, Healthcare, and Third party. The Retail channel sells to furniture, specialty and department stores. The Direct channel sells directly to consumers. The Healthcare channel sells to hospitals, nursing homes, healthcare professionals and medical retailers. The Third party channel sells to distributors in countries where we do not operate our own distribution. The following table sets forth Net sales information, by channel:

	Consolidated		Domestic		International	
($ in millions)	Year Ended December 31, 2005	Year Ended December 31, 2004	Year Ended December 31, 2005	Year Ended December 31, 2004	Year Ended December 31, 2005	Year Ended December 31, 2004
Retail	**$ 639.0**	$ 489.5	**$ 426.0**	$ 327.1	**$ 213.0**	$ 162.4
Direct	**103.2**	99.7	**88.6**	84.2	**14.6**	15.5
Healthcare	**45.9**	46.6	**11.0**	11.5	**34.9**	35.1
Third Party	**48.6**	49.1	**10.7**	8.0	**37.9**	41.1
	$ 836.7	$ 684.9	**$ 536.3**	$ 430.8	**$ 300.4**	$ 254.1
Domestic	**$ 536.3**	$ 430.8				
International	**300.4**	254.1				
Total	**$ 836.7**	$ 684.9				

A summary of Net sales by product is below:

($ in millions)	Consolidated Year Ended December 31, 2005	Consolidated Year Ended December 31, 2004	Domestic Year Ended December 31, 2005	Domestic Year Ended December 31, 2004	International Year Ended December 31, 2005	International Year Ended December 31, 2004
Net sales:						
Mattresses	**$ 566.4**	$ 433.3	**$ 392.0**	$ 302.5	**$ 174.4**	$ 130.8
Pillows	**126.2**	138.0	**54.0**	54.4	**72.2**	83.6
Other	**144.1**	113.6	**90.3**	73.9	**53.8**	39.7
	$ 836.7	$ 684.9	**$ 536.3**	$ 430.8	**$ 300.4**	$ 254.1
Units sold:						
Mattresses	**685,316**	547,705	**383,663**	323,444	**301,653**	224,261
Pillows	**2,535,981**	2,896,786	**1,100,725**	1,117,640	**1,435,256**	1,779,146

Net sales. Net sales for the year ended December 31, 2005 increased to $836.7 million from $684.9 million, an increase of $151.8 million, or 22%. This increase in Net sales was primarily attributable to the continued execution of our core strategy of investing to build our global brand awareness and penetrating existing channels. During 2005, Net sales growth attributable to foreign currency exchange rate fluctuation was $1.9 million, which represented less than 1% of Net sales. Our largest channel continues to be Retail, which increased $149.5 million, or 31% in 2005. The growth in our Retail channel reflects our focus on targeted penetration of furniture retail stores in both our Domestic and International markets. Additionally, we added new product offerings to our existing line in both our Domestic and International markets in 2005 as described in our segments discussions below. Our Direct channel increased 4% while the Healthcare and Third party channels decreased 2%, and 1%, respectively. The decrease in our Third party channel was primarily due to persistent weakness in our International pillow business, mainly in Asia. While this business continues to recover, it has not returned to operating performance levels that we expected for the year. Consolidated pillow sales decreased approximately $11.8 million from 2004, primarily attributable to a decline in our International sales in Asia to certain Third Party distributors.

Although our Net sales rose 22% for the year ended December 31, 2005, our sales growth slowed considerably during 2005, with Net sales in the fourth quarter of 2005 increasing 9% as compared to the fourth quarter of 2004. In particular, sales in our U.S. Retail channel were lower than expected as we faced a more challenging retail environment in the second half of 2005. We have undertaken several initiatives to accelerate Domestic sales growth and otherwise strengthen our business in 2006. These initiatives include expanding our retail sales force in both the U.S. and internationally and increasing our marketing investment around the world to continue building our brand awareness.

Domestic. Domestic Net sales for the year ended December 31, 2005 increased to $536.3 million from $430.8 million for the same period in 2004, an increase of $105.5 million, or 24%. Our Domestic Retail channel continues to be our largest channel, with $426.0 million in Net sales for 2005. This is an increase of $98.9 million, or 30% over the prior year. This increase is primarily a result of our expanding distribution for our products into additional retail furniture and bedding stores. In 2005, we added approximately 1,210 retail furniture and bedding doors and introduced two new mattress products, 'The EuroBed *by* Tempur-Pedic™' and 'The OriginalBed *by* Tempur-Pedic™'. Our Third Party channel increased 34% due to the continued focus on expanding our distribution network in North, Central and South America. Our Direct channel grew 5%, while our Healthcare channel decreased 4%. Domestic mattress sales in 2005 increased $89.5 million, or 30%, over the same period in 2004. Pillow sales decreased $0.4 million, or 1%. During 2004, pillow sales were positively

impacted by the launch of a new pillow line with one of our largest Retail channel customers. While we launched a new pillow product in 2005 with the same customer, we did not receive the same positive market response as we did in 2004.

International. International Net sales for the year ended December 31, 2005 increased to $300.4 million from $254.1 million for the same period in 2004, an increase of $46.3 million, or 18%. The largest channel in our International segment continues to be our Retail channel, which increased $50.6 million, or 31%, for the year ended December 31, 2005. The growth in Retail sales is due to the addition of new stores to the channel and successful new product launches during the year. We added approximately 800 furniture retail and department store doors in 2005 and increased distribution of our Scandinavian Bed Collection in Europe which was previously only available in the Nordic region. Our Direct, Healthcare, and Third party channels had sales decreases of 6%, 1%, and 8%, respectively. The decrease in our Direct channel is primarily related to the decision to change our Direct sales operation in several European markets in favor of a modified version of the program that directs potential customers to furniture retail and department stores that sell our products. Our Healthcare channel decreased primarily due to changes in government reimbursement policies in certain countries. Our Third Party channel decreased due to strategic changes in our International Third Party channel in Asia that we implemented in order to protect our subsidiary distribution in the region. International mattress sales increased $43.6 million, or 33%, for 2005. Pillow sales decreased $11.4 million, or 14%, as compared to 2004. The decrease in pillow sales is primarily related to our efforts to limit cross importation into existing markets in Asia.

Gross profit. Gross profit for the year ended December 31, 2005 increased to $423.9 million from $361.0 million for the same period in 2004, an increase of $62.9 million, or 17%. Our margins are impacted by the relative rate of growth in our Retail channel. Sales in our Retail channel are generally at wholesale prices. The overall shift in our product mix to mattresses is also a factor because our mattresses generally carry lower margins than our pillows. We expect continued downward pressure on our margins as a result of the continued growth in our Retail channel and in mattress sales. Our margins are also impacted by changes in our manufacturing capacity, which affects our utilization.

Increases in shipping costs also reduced our margins in 2005. We began importing several mattress models from Europe in the first quarter of 2005, and we continued importing through the end of the third quarter in order to build the necessary stock levels of the EuroBed that was introduced to the U.S. during the year. Therefore, we incurred additional freight costs to bring this inventory from Europe. As a result of sales in the U.S. growing at a slower rate than expected, increased productivity at our U.S. manufacturing facility and the new capability to make EuroBed mattresses in our U.S. manufacturing facility, we will no longer be importing mattresses from Denmark. Accordingly, as part of our current production plan, we began to reduce our inventory levels in the fourth quarter of 2005 and plan to continue to manage inventory levels in the future.

Increases in raw materials costs also reduced our margin. We currently believe there will continue to be cost pressures from the recent rise in chemical prices driven primarily by natural gas increases, and fuel surcharges for the transportation and delivery of our products. We have taken steps to mitigate the impact of price increases through productivity and efficiency initiatives, including negotiated discounts for many of our chemical purchases, reverse auctions on certain material purchases, purchasing leverage on consolidated global buying, and implementation of warehousing and shipping efficiencies.

Domestic. Domestic Gross profit for the year ended December 31, 2005 increased to $240.7 million from $211.7 million, an increase of $29.0 million, or 14%. The Gross profit margin in our Domestic segment was 45% and 49% for 2005 and 2004, respectively. For the year ended December 31, 2005, the Gross profit margin for the Domestic segment was impacted by the increase in our Retail channel sales, the increased freight costs of importing products from our Danish manufacturing facility, and increases in raw materials costs. In addition, during the third quarter, we simultaneously introduced the EuroBed and the OriginalBed and succeeded in placing these products with a large number of retailers. However, as part of this rollout process, we discounted

showroom floor models for retail accounts and this negatively impacted our gross profit margins. We completed the majority of the these rollouts during 2005. Our Domestic Cost of sales increased to $295.6 million for the year ended December 31, 2005 as compared to $219.1 million for the year ended December 31, 2004, an increase of $76.5 million, or 35%.

International. International Gross profit for the year ended December 31, 2005 increased to $183.2 million from $149.3 million, an increase of $33.9 million, or 23%. The Gross profit margin in our International segment was 61% and 59% for 2005 and 2004, respectively. For the year ended December 31, 2005, the Gross profit margin for the International segment was impacted by product and geographic mix. In addition, increased levels of production to satisfy U.S. demand improved the level of manufacturing capacity utilization. Our International Cost of sales increased to $117.2 million for the year ended December 31, 2005, as compared to $104.8 million for the year ended December 31, 2004, an increase of $12.4 million, or 12%.

Selling and marketing expenses. Selling and marketing expenses include advertising and media production associated with our Direct channel, other marketing materials such as catalogs, brochures, videos, product samples, direct customer mailings and point of purchase materials, and sales force compensation and customer service. We also include in Selling and marketing expenses certain new product development costs, including market research and testing for new products. Selling and marketing expenses increased to $162.2 million for the year ended December 31, 2005 as compared to $138.7 million for the year ended December 31, 2004, an increase of $23.5 million, or 17%. The increase in Selling and marketing expenses was due to additional spending on advertising, sales compensation and point of purchase materials. Selling and marketing expenses as a percentage of Net sales decreased to 19% during 2005 from 21% for 2004. The decrease was due primarily to the increase in the Net sales of our Retail channel. Our Retail channel has lower selling expenses than our other channels on a combined basis and, accordingly, our Selling and marketing expenses as a percentage of our Net sales are affected by the level of our Retail sales as a percentage of our Net sales.

General and administrative and other. General and administrative and other expenses include management salaries, information technology, professional fees, depreciation of furniture and fixtures, leasehold improvements and computer equipment, expenses for finance, accounting, human resources and other administrative functions, and research and development costs associated with our new product developments. General and administrative and other expenses decreased to $70.8 million for the year ended December 31, 2005 as compared to $71.3 million for the year ended December 31, 2004, a decrease of $0.5 million, or 1%. While costs such as depreciation, salary expenses and property and franchise taxes increased in connection with our continued growth, other costs such as stock-based compensation and compliance with Sarbanes-Oxley requirements decreased.

General and administrative and other expenses as a percentage of Net sales were 8% and 10% for the years ended December 31, 2005 and December 31, 2004, respectively. The decrease as a percentage of sales was due to increased operating leverage from fixed administrative costs. Additionally, the costs of complying with Sarbanes-Oxley requirements were substantially less than the prior year, when we were incurring the costs of first year compliance.

Certain options granted during the year prior to the initial public offering have exercise prices that are less than the deemed market value of the underlying common stock at the date of grant. The resulting unearned stock-based compensation is amortized to compensation expense over the respective vesting term, based on the “graded vesting” methodology. As of December 31, 2005 and 2004, we had remaining unearned stock-based compensation of $2.2 million and $5.1 million, respectively, including restricted stock units. We recorded $2.9 million and $5.2 million of compensation expense for the years ended December 31, 2005 and 2004, respectively, related to amortization of this stock-based compensation. The future amortization of remaining unearned stock-based compensation costs as of December 31, 2005 will be $1.5 million in 2006 and $0.7 million in 2007.

Interest expense, net. Interest expense, net includes the interest costs associated with our borrowings and the amortization of deferred financing costs related to those borrowings. Interest expense, net, decreased to $20.3

million for the year ended December 31, 2005 as compared to $23.5 million for the year ended December 31, 2004, a decrease of $3.2 million, or 14%. This decrease in interest expense is attributable to lower average debt levels in 2005 and capitalized interest costs of $2.6 million for the year ended December 31, 2005 related to the construction of our new manufacturing facility.

Loss on debt extinguishment. Loss on debt extinguishment for the year ended December 31, 2005 was $4.2 million. Of that loss, $0.7 million relates to the write-off of deferred financing fees associated with the European Term A Loan, which was prepaid on March 31, 2005. In the fourth quarter of 2005, we also incurred a non-cash write-off of $3.5 million related to deferred financing charges from our 2003 Senior Credit Facility. Loss on debt extinguishment for the year ended December 31, 2004 was $5.4 million and relates to our redemption in January 2004 of $52.5 million aggregate principal amount of the outstanding Senior Subordinated Notes.

Income tax provision. Our Income tax provision includes income taxes associated with taxes currently payable and deferred taxes, and it includes the impact of net operating losses for certain of our domestic and foreign operations. For the year ended December 31, 2005, our Income tax provision also includes an expense of $6.6 million related to the repatriation of foreign earnings under the provisions of the Jobs Creation Act of 2004 and a benefit of $1.6 million related to a favorable state tax ruling. Our effective income tax rates for the year ended December 31, 2005 and for the year ended December 31, 2004 differed from the federal statutory rate principally because of the effect of the charge for the repatriation in 2005, the benefit from the favorable state tax ruling in 2005, certain foreign tax rate differentials, state and local income taxes, valuation allowances on certain foreign net operating losses, and compensation expense associated with certain options granted prior to the initial public offering.

Our effective tax rate for the year ended December 31, 2005 was 40.3%. Excluding the impact of the transactions and adjustments described above, our effective tax rate would have been 37.3% for the year ended December 31, 2005. For the same period in 2004, the effective tax rate was 38.6%.

Year Ended December 31, 2004 Compared with Year Ended December 31, 2003

The following table sets forth Net sales information, by channel:

	Consolidated		Domestic		International	
($ in millions)	Year Ended December 31, 2004	Year Ended December 31, 2003	Year Ended December 31, 2004	Year Ended December 31, 2003	Year Ended December 31, 2004	Year Ended December 31, 2003
Retail	**$ 489.5**	$ 313.4	**$ 327.1**	$ 192.2	**$ 162.4**	$ 121.2
Direct	**99.7**	86.9	**84.2**	75.0	**15.5**	11.9
Healthcare	**46.6**	43.1	**11.5**	9.8	**35.1**	33.3
Third Party	**49.1**	35.7	**8.0**	5.2	**41.1**	30.5
	$ 684.9	$ 479.1	**$ 430.8**	$ 282.2	**$ 254.1**	$ 196.9
Domestic	**$ 430.8**	$ 282.2				
International	**254.1**	196.9				
Total	**$ 684.9**	$ 479.1				

Net sales. Net sales for the year ended December 31, 2004 were $684.9 million as compared to $479.1 million for the year ended December 31, 2003, an increase of $205.8 million, or 43%. This increase in Net sales was primarily attributable to the execution of our core strategy of investing to build our global brand awareness and penetrating existing channels. During 2004, Net sales growth attributable to foreign currency exchange rate fluctuation was $22.5 million, which represented 3.3% of Net sales. The increase in our Net sales was realized across all of our channels. Our largest channel was Retail, which increased $176.1 million, or 56% in 2004. Our

Direct, Healthcare and Third party channels increased 15%, 8%, and 38%, respectively. This increase in our Third party channel was primarily due to continued expansion into new markets as well as increased distribution into our existing markets.

Domestic. Domestic Net sales for the year ended December 31, 2004 increased to $430.8 million from $282.2 million, an increase of $148.6 million, or 53%. Our largest Domestic channel was Retail, which increased $134.9 million, or 70% in 2004. This increase in Domestic Retail is a continuation of our strategy to expand distribution for our products into retail furniture and bedding stores. Our Direct, Healthcare and Third party channels grew 12%, 17%, and 54%, respectively. Our Third party channel increased primarily due to expanding our distribution network in North and Central America.

International. International Net sales for the year ended December 31, 2004 increased to $254.1 million from $196.9 million, an increase of $57.2 million, or 29%. Our largest channel in our International segment was our Retail channel, which increased $41.2 million, or 34%, for 2004. This increase in International Retail primarily resulted from increased distribution into existing markets. Our Direct, Healthcare, and Third party channels grew 30%, 5%, and 35%, respectively.

Gross profit. Gross profit for the year ended December 31, 2004 increased to $361.0 million from $255.3 million, an increase of $105.7 million, or 41%. Our margins are impacted by the relative rate of growth in our Retail channel because sales in our Retail channel are generally at wholesale prices. Our margins are also impacted by additions to our manufacturing capacity, which affects our utilization rates.

Domestic. Domestic Gross profit for the year ended December 31, 2004 increased to $211.7 million from $135.1 million, an increase of $76.6 million, or 57%. The Gross profit margin in our Domestic segment was 49% and 48% for 2004 and 2003, respectively. During 2004, the Domestic Gross profit margin was impacted by favorable product mix resulting from increased sales of our higher margin mattress models and increased utilization of our manufacturing capacity, offset by the increase in our Retail channel sales.

International. International Gross profit, including eliminations for sales to our Domestic segment, for the year ended December 31, 2004 increased to $149.3 million from $120.2 million, an increase of $29.1 million, or 24%. The Gross profit margin in our International segment was 59% and 61% for 2004 and 2003, respectively. During 2004, the International Gross profit margin was impacted by product and geographic mix.

Selling and marketing expenses. Selling and marketing expenses increased to $138.7 million for the year ended December 31, 2004 as compared to $106.7 million for the year ended December 31, 2003, an increase of $32.0 million, or 30%. The increase in Selling and marketing expenses was due to additional spending on advertising, sales compensation and point of purchase materials. Selling and marketing expenses as a percentage of Net sales decreased to 21% during the year ended December 31, 2004 from 22% for the year ended December 31, 2003. The decrease as a percentage of Net sales was primarily due to an increase in the Net sales of our Retail channel.

General and administrative and other. General and administrative and other expenses increased to $71.3 million for the year ended December 31, 2004 as compared to $51.5 million for the year ended December 31, 2003, an increase of $19.8 million, or 38%. The increase was primarily due to stock-based compensation expense and other additional spending on corporate overhead expenses, including information technology and professional services. For the year ended December 31, 2004, we incurred expenses of $0.9 million relating to our secondary offering, and $1.8 million in costs associated with our implementation of Sarbanes-Oxley Section 404 requirements. The decrease as a percentage of sales was due to increased operating leverage from fixed administrative costs.

Interest expense, net. Interest expense, net includes the interest costs associated with our 2003 Senior Credit Facility and Senior Subordinated Notes and the amortization of deferred financing costs related to those facilities.

Interest expense, net increased to $23.5 million for the year ended December 31, 2004 as compared to $20.5 million for the year ended December 31, 2003, an increase of $3.0 million, or 15%. This increase in interest expense is attributable to higher average debt levels in 2004.

Loss on debt extinguishment. Loss on debt extinguishment for the year ended December 31, 2004 was $5.4 million and relates to the Company's redemption in January 2004 of $52.5 million aggregate principal amount of the outstanding Senior Subordinated Notes. Loss on debt extinguishment for the year ended December 31, 2003 includes transaction related expenses totaling $13.7 million relating to the write-off of deferred financing fees, original issue discount and prepayment penalties relating to the Company's recapitalization in August 2003.

Income tax provision. Our Income tax provision includes income taxes associated with taxes currently payable and deferred taxes and includes the impact of the utilization of foreign tax credits associated with our foreign earnings and profits and net operating losses for certain of our foreign operations. Our effective income tax rates for the year ended December 31, 2004 and for the year ended December 31, 2003 differed from the federal statutory rate principally because of the effect of certain foreign tax rate differentials, state and local income taxes, and valuation allowances on foreign net operating losses and foreign tax credits. Our effective tax rate for the years ended December 31, 2004 and 2003 was 38.6%.

Liquidity and Capital Resources

Liquidity

Our principal sources of funds are cash flows from operations and borrowings. Our principal uses of funds consist of capital expenditures, payments of principal and interest on our debt facilities, and share repurchases made from time to time pursuant to a share repurchase program. At December 31, 2005, we had working capital of $107.3 million including Cash and cash equivalents of $17.9 million as compared to working capital of $114.7 million including $28.4 million in Cash and cash equivalents as of December 31, 2004. As outlined below, increased borrowings, coupled with a lower level of cash on hand, led to a 6% decrease in working capital from December 31, 2004 to December 31, 2005.

Our cash flow from operations increased to $102.2 million for the year ended December 31, 2005 as compared to $77.0 million for the year ended December 31, 2004. The increase in operating cash flows was primarily related to the increase in our net income and changes in certain operating assets and liabilities. Net income for the year ended December 31, 2005 increased by $24.3 million compared to the year ended December 31, 2004. Due to the limited capacity in our U.S. manufacturing operations and the longer lead time required to import our products from our Danish manufacturing facility, we increased our inventory levels $18.4 million for the year ended December 31, 2005, compared to an increase of only $6.3 million for the year ended December 31, 2004. Net sales in the U.S. grew at a slower rate than previously expected in the last half 2005 and also contributed to the inventory level increase. As a result of net sales in the U.S. growing at a slower rate than expected, increased productivity at our U.S. manufacturing facility and the new capability to make EuroBed mattresses in our U.S. manufacturing facility, we will no longer be importing mattresses from Denmark. Accordingly, as part of our current production plan, we began to reduce our inventory levels in the fourth quarter of 2005 and plan to continue to manage inventory levels in the future.

In addition, as our Retail channel grows we continue to experience increases in our Accounts receivable because this is largely a credit-based sales channel. During 2005, Accounts receivable increased $27.3 million compared to an increase of $33.0 million for the year ended December 31, 2004. Other operating assets and liabilities provided $5.4 million of working capital for the year ended December 31, 2005, compared to a use of $0.4 million for the year ended December 31, 2004, mainly due to the timing of certain income tax payments. Together, these result in $25.2 million of increased operating cash flows for the year ended December 31, 2005 compared to the same period in the prior year.

Net cash used in investing activities increased to $86.6 million for the year ended December 31, 2005 as compared to $38.4 million for the year ended December 31, 2004, an increase of $48.2 million. Investing

activities in the year ended December 31, 2005 consisted primarily of $73.0 million related to the construction of our new manufacturing facility in New Mexico.

Cash flow used by financing activities was $20.0 million for the year ended December 31, 2005 as compared to $28.5 million for the year ended December 31, 2004, representing a decrease in cash flow used of $8.5 million. This decrease is due primarily to our increased debt borrowings in 2005. In 2005, our debt borrowings were $532.3 million, and we had debt repayments of $476.2 million. The increased leverage allowed us to fund the repatriation of foreign earnings under the Jobs Creation Act and to fund the construction of our new manufacturing facility in New Mexico. Our Board of Directors authorized an $80.0 million share repurchase program in October 2005. We repurchased more than 6.8 million shares of our common stock at a total cost of $76.0 million during the fourth quarter. On January 25, 2006, Tempur-Pedic International Inc.'s Board of Directors amended the stock repurchase program described above to increase the total authorization by an additional $100.0 million resulting in a total authorization to purchase up to $180.0 million of Tempur-Pedic International Inc.'s common stock. We expect to fund these share repurchases from borrowings under the 2005 Senior Credit Facility and funds from operations. In 2004, we had debt borrowings of $50.5 million and debt repayments of $138.8 million of which $60.2 million was funded by cash held in trust for the repayment of Senior Subordinated Notes.

Capital Expenditures

Capital expenditures totaled $84.9 million for year ended December 31, 2005, including $2.6 million in capitalized interest costs related to the construction of our new manufacturing facility discussed below. Capital expenditures totaled $38.4 million for the year ended December 31, 2004. We currently expect our 2006 capital expenditures to be approximately $35.0 million including approximately $15.0 million for the completion of the new manufacturing facility. As of December 31, 2005, we had commitments of $9.2 million associated with the construction of our new plant.

In order to meet anticipated future demands for our products, we commenced construction of our third manufacturing facility in September 2004, located in Albuquerque, New Mexico. The new facility is expected to be completed in the fourth quarter of 2006. Our expected capital expenditures related to this facility are approximately $90.0 million. This facility will allow us to meet the demands for our products primarily in the western U.S. as well as certain third party distributors.

In 2004, we completed expansions of both our present manufacturing facilities. Our Danish facility expansion cost approximately $18.4 million, and our Duffield, Virginia facility expansion cost approximately $21.0 million. The additional production capacity at our U.S. manufacturing facility allowed us to significantly increase our mattress manufacturing capacity. The expansion at our Danish facility allowed us to meet the demands for our international operations.

Debt Service

Senior Credit Facility Refinancing. On October 18, 2005, Tempur-Pedic International Inc. entered into a credit agreement (the 2005 Senior Credit Facility) with Tempur-Pedic, Inc., Tempur Production USA, Inc., Dan-Foam ApS, certain other subsidiaries of Tempur-Pedic International, Inc., Bank of America, N.A., Fifth Third Bank, Nordea Bank Danmark, A/S and Suntrust Bank. We used proceeds from the 2005 Senior Credit Facility to pay off amounts outstanding under our 2003 Senior Credit Facility and an unsecured revolving credit facility, among other things. The 2003 Senior Credit Facility was terminated upon repayment, and we recorded a non-cash write-off of $3.5 million in October 2005 related to deferred financing charges from our 2003 Senior Credit Facility.

The 2005 Senior Credit Facility consists of domestic and foreign credit facilities that provide for the incurrence of indebtedness up to an aggregate principal amount of $340.0 million. The domestic credit facility is

a five-year, $200.0 million revolving credit facility (Domestic Revolver). The foreign credit facilities consist of a $30.0 million revolving credit facility (Foreign Revolver) and $110.0 million term loan (Foreign Term Loan). The various credit facilities bear interest at a rate equal to the 2005 Senior Credit Facility's applicable margin, as determined in accordance with a performance pricing grid set forth in the 2005 Senior Credit Facility, plus one of the following indexes: (i) LIBOR and (ii) for U.S. dollar-denominated loans only, a base rate (defined as the higher of (a) the Bank of America prime rate and (b) the Federal Funds rate plus .50%). We also pay an annual facility fee on the total amount of the 2005 Senior Credit Facility. The facility fee is calculated based on the consolidated leverage ratio and ranges from .175% to .35%.

The 2005 Senior Credit Facility is guaranteed by Tempur-Pedic International Inc., Tempur World, LLC and Tempur World Holdings, LLC, as well as certain other subsidiaries of ours, and is secured by certain fixed and intangible assets of Dan Foam ApS and substantially all U.S. assets. The maturity date of the 2005 Senior Credit Facility is October 18, 2010. The 2005 Senior Credit Facility contains certain financial covenants and requirements affecting us, among the most significant of which are a fixed charge coverage ratio requirement and a consolidated leverage ratio requirement. We were in compliance with all covenants as of December 31, 2005.

At December 31, 2005, we had a total of $230.0 million of long-term revolving credit facilities under the 2005 Senior Credit Facility, which was comprised of the $200.0 million Domestic Revolver and the $30.0 million Foreign Revolver (collectively, the Revolvers). The Revolvers provide for the issuance of letters of credit which, when issued, constitute usage and reduce availability under the Revolvers. The aggregate amount of letters of credit outstanding under the Revolvers were $56.5 million at December 31, 2005. After giving effect to letters of credit and $83.0 million in borrowings under the Domestic Revolver, total availability under the Revolvers was $90.5 million at December 31, 2005. There were no borrowings under the Foreign Revolver as of December 31, 2005.

As of December 31, 2005, Dan Foam ApS had borrowed all amounts available under the Foreign Term Loan. Dan-Foam ApS used these borrowings and cash on hand to fund the repatriation of foreign earnings of $155.7 million during 2005. See Note 10 in the Notes to Consolidated Financial Statements for further discussion of the Jobs Creation Act.

On February 8, 2006, Tempur-Pedic International Inc. entered into an amendment to its 2005 Senior Credit Facility, with Tempur-Pedic International Inc. and certain of its subsidiaries and a syndicate of banks, including Bank of America, N.A. The amendment, among other things, (i) increases the amount available under the 2005 Senior Credit Facility's Domestic Revolver from $200.0 million to $260.0 million, (ii) decreases the amount available under the 2005 Senior Credit Facility's Foreign Revolver from $30.0 million to $20.0 million, and (iii) amends and restates the covenant in the 2005 Senior Credit Facility addressing maintenance of a minimum Consolidated Fixed Charge Coverage Ratio, as defined in the 2005 Senior Credit Facility, to make the covenant less restrictive. The Company elected to reduce the size of the Foreign Revolver in order to minimize commitment costs for unused credit facilities.

Industrial Revenue Bonds. On October 27, 2005, Tempur Production USA, Inc. (Tempur Production), a subsidiary of Tempur-Pedic International Inc., completed an industrial revenue bond financing for the construction and equipping of Tempur Production's new manufacturing facility (the Project) located in Bernalillo County, New Mexico (Bernalillo County). Under the terms of the financing, Bernalillo County will issue up to $75.0 million of Series 2005A Taxable Variable Rate Industrial Revenue Bonds (the Series A Bonds). The Series A Bonds will be marketed to third parties by a remarketing agent and secured by a letter of credit issued under our Domestic Revolver and purchased by qualified investors. The Series A Bonds have a final maturity date of September 1, 2030. The interest rate on the Series A Bonds is a weekly rate set by the remarketing agent, in its sole discretion, though the interest rate may not exceed the lesser of (i) the highest rate allowed under New Mexico law, or (ii) 12% per annum. On October 27, 2005, Tempur Production made an initial draw of $53.9 million on the Series A Bonds. We used proceeds from the Bonds to pay down the prior domestic revolving credit facility, among other things.

Bernalillo County will also issue up to $25.0 million of Series 2005B Taxable Fixed Rate Industrial Revenue Bonds (the Series B Bonds, and collectively with the Series A Bonds, the Bonds). The Series B Bonds will be sold to Tempur World LLC, will not be secured by the letter of credit described above, and will be held by Tempur World, LLC, representing our equity in the Project. The Series B Bonds have a final maturity date of September 1, 2035. The interest rate on the Series B Bonds is fixed at 7.75%. On October 27, 2005, Tempur Production made an initial draw of $18.0 million under the Series B Bonds, which was transferred to and used by Tempur World LLC to purchase Series B Bonds.

On October 27, 2005, Tempur Production transferred its interest in the Project to Bernalillo County, and Bernalillo County leased the Project back to Tempur Production on a long-term basis with the right to repurchase the Project for one dollar when the Bonds are retired. Pursuant to the lease agreement, Tempur Production will pay rent to Bernalillo County in an amount sufficient to pay debt service on the Bonds and certain fees and expenses. The Bonds are not general obligations of Bernalillo County, but are special, limited obligations payable solely from bond proceeds, rent paid by Tempur Production under the lease agreement, and other revenues. The substance of the transaction is that Bernalillo County issued the Bonds on behalf of Tempur Production. Therefore, we recorded the obligation as a long-term debt of $53.9 million in our consolidated balance sheet on the date of the transaction.

Senior Subordinated Notes. In 2003, Tempur-Pedic, Inc. and Tempur Production (Issuers) issued $150.0 million aggregate principal amount of 10.25% Senior Subordinated Notes due 2010 (Senior Subordinated Notes). The Senior Subordinated Notes are unsecured senior subordinated indebtedness of the Issuers and are fully and unconditionally, and jointly and severally, guaranteed on an unsecured senior subordinated basis by the Issuers' ultimate parent, Tempur-Pedic International Inc., and certain other subsidiaries of Tempur-Pedic International Inc. Except as noted below, the Senior Subordinated Notes have no mandatory redemption or sinking fund requirements. However, the indenture governing the Senior Subordinated Notes permits the partial redemption at the Issuer's option under certain circumstances prior to August 15, 2006, and full redemption at the Issuer's option prior to August 15, 2007 at a redemption price of 100% of the principal amount plus a "make whole" premium based on the discounted value of the redemption price payable at August 15, 2007 plus remaining interest payments to such date or after August 15, 2007 at a redemption price of 105.125% of the principal amount.

If Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur-Pedic International Inc. or any of Tempur-Pedic International Inc.'s other restricted subsidiaries sell certain assets or experience specific kinds of changes of control, Tempur-Pedic, Inc. and Tempur Production USA, Inc. must offer to repurchase the Senior Subordinated Notes at the prices, plus accrued and unpaid interest, and additional interest, if any, to the date of redemption specified in the indenture.

On January 23, 2004, the Issuers redeemed an aggregate principal amount of $52.5 million of outstanding Senior Subordinated Notes. The redemption price was 110.25% of the principal amount plus accrued interest, and the redemption was funded with a portion of the net proceeds from our initial public offering. We reflected the $5.4 million redemption premium as a Loss on extinguishment of debt included in Other income (expense), net in the year ended December 31, 2004.

The Senior Subordinated Notes contain certain nonfinancial and financial covenants which include restrictions on: the declaration or payment of dividends and distributions; the payment, purchase, redemption, defeasance, acquisition or retirement of subordinated indebtedness; the granting of liens; the making of loans and the transfer of properties and assets; mergers; consolidations or sale of assets; the acquisition or creation of additional subsidiaries; and the sale and leaseback of assets. We were in compliance with all covenants as of December 31, 2005.

Stockholders' Equity

Initial Public Offering. In December 2003, we raised $87.5 million from the initial public offering of 6.3 million shares of common stock at a price to the public of $14.00 per share, all of which shares were issued and sold by us. Net proceeds, after deducting underwriting discounts and commissions, of $79.0 million were

received by us and invested in short-term, investment-grade, interest-bearing instruments. In connection with the initial public offering, certain of our stockholders also sold 15.3 million shares of common stock, including 2.8 million shares pursuant to the underwriters' exercise in full of their over-allotment option, for net proceeds of $200.4 million. We did not receive any proceeds from the sale of shares by the selling stockholders. We used a portion of the proceeds from the initial public offering to redeem $52.5 million of Senior Subordinated Notes and to repay approximately $18.7 million of indebtedness under our 2003 Senior Credit Facility. In conjunction with the January 23, 2004 redemption of the Senior Subordinated Notes, we reflected the $5.4 million redemption premium as a Loss on debt extinguishment in the first quarter of 2004. Total offering expenses were approximately $8.6 million.

Secondary Public Offering. On November 23, 2004, Tempur-Pedic International Inc. closed a secondary offering of 15.0 million shares of its common stock, including the subsequent exercise in full of the underwriters' overallotment option, at a price of $18.96 per share. All shares were sold by certain of the stockholders pursuant to the terms of a registration rights agreement originally entered into in November 2002 in connection with the acquisition of Tempur World, Inc. We incurred $0.9 million in expenses associated with this offering.

Share Repurchase Program. On October 18, 2005, our Board of Directors authorized the repurchase of up to $80.0 million of the common stock. Share repurchases under this program were made through open market transactions, negotiated purchases or otherwise, at times and in such amounts as we deemed appropriate. During 2005, we repurchased 6.8 million shares, at a total cost of $76.0 million. We funded these share repurchases from borrowings under the 2005 Senior Credit Facility and funds from operations.

On January 25, 2006, our Board of Directors amended the share repurchase program described above to increase the total authorization by an additional $100.0 million resulting in a total authorization to purchase up to $180.0 million of Tempur-Pedic International Inc.'s common stock. Accordingly, as of January 25, 2006, because we had already purchased $76.0 million of shares under the program, we were authorized to purchase up to $104.0 million of our common stock. Since January 25, 2006, we have repurchased an additional 3.7 million shares at a total cost of $42.8 million through February 24, 2006. The share repurchases have been and will continue to be funded from borrowings under the 2005 Senior Credit Facility and funds from operations.

Future Liquidity Sources

Our primary sources of liquidity are cash flow from operations and borrowings under our Revolvers. We expect that ongoing requirements for debt service and capital expenditures will be funded from these sources. As of December 31, 2005, we had $344.5 million in total Long-term debt outstanding, and our Stockholders' Equity was $226.3 million. Our significant debt service obligations could, under certain circumstances, have material consequences to our security holders. Total cash interest payments related to our borrowings are expected to be approximately $20.5 million in 2006.

Based upon the current level of operations and anticipated growth, we believe that cash generated from operations and amounts available under our revolving credit facilities will be adequate to meet our anticipated debt service requirements, capital expenditures and working capital needs for the foreseeable future. There can be no assurance, however, that our business will generate sufficient cash flow from operations or that future borrowings will be available under our 2005 Senior Credit Facility or otherwise to enable us to service our indebtedness or to make anticipated capital expenditures.

Contractual Obligations

Our contractual obligations and other commercial commitments as of December 31, 2005 are summarized below:

Contractual Obligations *($ in millions)*	Payment Due By Period						
	2006	2007	2008	2009	2010	After 2010	Total Obligations
Long-term debt	$ 30.8	$ 30.8	$ 30.8	$ 30.6	$ 205.5	$ 16.0	$ 344.5
Operating leases	3.1	2.7	1.9	1.7	1.0	0.7	11.1
Capital expenditure commitments	9.2	—	—	—	—		9.2
Total	$ 43.1	$ 33.5	$ 32.7	$ 32.3	$ 206.5	$ 16.7	$ 364.8

Factors That May Affect Future Performance

Managing Growth—We have grown rapidly, with our Net sales increasing from $221.5 million in 2001 to $836.7 million for 2005. Our growth has placed, and will continue to place, a strain on our management, production, product distribution network, information systems and other resources. In response to these challenges, management has continued to invest in increased production capacity, enhanced operating and financial infrastructure and systems and continued expansion of the human resources in our operations. Our expenditures for advertising and other marketing-related activities are made as advertising rates are favorable to us and as the continued growth in the business allows us the ability to invest in building our brand.

Competition—Participants in the mattress and pillow industries compete primarily on price, quality, brand name recognition, product availability and product performance. We compete with a number of different types of mattress alternatives, including standard innerspring mattresses, other foam mattresses, waterbeds, futons, air beds and other air-supported mattresses. These alternative products are sold through a variety of channels, including furniture stores, specialty bedding stores, department stores, mass merchants, wholesale clubs, telemarketing programs, television infomercials and catalogs.

Our largest competitors have significant financial, marketing and manufacturing resources and strong brand name recognition, and sell their products through broad and well established distribution channels. Additionally, we believe that a number of our significant competitors offer mattress products claimed to be similar to our TEMPUR® mattresses and pillows. We are susceptible to competition from lower priced product offerings. We provide strong channel profits to our retailers and distributors which management believes will continue to provide an attractive business model for our retailers and discourage them from carrying competing lower-priced products.

Significant Growth Opportunities—Our products are currently sold in approximately 5,310 furniture and bedding retail stores in the U. S., out of a total of approximately 10,000 stores we have identified as appropriate targets. Within this addressable market of approximately 10,000 stores, our plan is to increase our total penetration to a total of 7,000 to 8,000 stores over time. Our products are also sold in approximately 4,100 furniture retail and department stores outside the U.S., out of a total of approximately 7,000 stores that we have identified as appropriate targets. In addition, we have a significant installed pillow base in our Asia market that we believe creates an opportunity to develop a successful mattress market. We are continuing to develop products that are responsive to consumer demand in our markets internationally.

In addition to these growth opportunities, management believes that we currently supply only a small percentage of approximately 15,400 nursing homes and 5,000 hospitals in the U.S., with a collective bed count in excess of 2.7 million. Clinical evidence indicates that our products are both effective and cost efficient for the prevention and treatment of pressure ulcers, or bed sores, a major problem for elderly and bed-ridden patients. A change in the U.S. Medicare and Medicaid reimbursement policies toward prevention of bed sores and away from treatment could expand our growth potential in this market.

Financial Leverage—As of December 31, 2005, we had $344.5 million of Long-term debt outstanding, and our Stockholders' Equity was $226.3 million. Higher financial leverage makes us more vulnerable to general adverse competitive, economic and industry conditions. We believe that operating margins combined with the inherent operating leverage in the business will enable us to continue de-leveraging the business in a manner consistent with historical experience. There can be no assurance, however, that our business will generate sufficient cash flow from operations or that future borrowings will be available under our 2005 Senior Credit Facility, or otherwise, to enable us to de-leverage the business.

Exchange Rates—As a multinational company, we conduct our business in a wide variety of currencies and are therefore subject to market risk for changes in foreign exchange rates. We use foreign exchange forward contracts to manage a portion of the exposure to the risk of the eventual net cash inflows and outflows resulting from foreign currency denominated transactions between Tempur-Pedic subsidiaries and their customers and suppliers, as well as between the Tempur-Pedic subsidiaries themselves. These hedging transactions may not succeed in managing our foreign currency exchange rate risk. See "ITEM 7A. Quantitative and Qualitative Disclosures About Market Risk—Foreign Currency Exposures" under Part II of this report.

Foreign currency exchange rate movements also create a degree of risk by affecting the U.S. dollar value of sales made and costs incurred in foreign currencies. We do not enter into hedging transactions to hedge this risk. Consequently, our reported earnings and financial position could fluctuate materially as a result of foreign exchange gains or losses. Our outlook assumes no significant changes in currency values from current rates. Should currency rates change sharply, our results could be negatively impacted. See "ITEM 7A. Quantitative and Qualitative Disclosures About Market Risk—Foreign Currency Exposures" under Part II of this report.

Critical Accounting Policies and Estimates

Our management is responsible for our financial statements and has evaluated the accounting policies to be used in their preparation. Our management believes these policies are reasonable and appropriate. The following discussion identifies those accounting policies that we believe are critical in the preparation of our financial statements, the judgments and uncertainties affecting the application of those policies and the possibility that materially different amounts will be reported under different conditions or using different assumptions.

The preparation of financial statements in conformity with accounting principles generally accepted in the U.S. requires that the management make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of commitments and contingencies at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Our actual results could differ from those estimates.

Revenue Recognition

Our estimates of sales returns are a critical component of our revenue recognition. We recognize sales, net of estimated returns, when we ship our products to customers and the risks and rewards of ownership are transferred to them. Estimated sales returns are provided at the time of sale, based on our level of historical sales returns. We allow returns for up to 120 days following a sale, depending on the channel and promotion. Our level of sales returns differs by channel, with our direct channel typically experiencing the highest rate of returns. Our level of returns has been consistent with our estimates and has been improving steadily over the last year as our retail channel, which experiences lower returns than other sales channels, continues to grow as a percentage of overall Net sales.

Warranties

Cost of sales includes estimated costs to service warranty claims of our customers. Our estimate is based on our historical claims experience and extensive product testing that we perform from time to time. We provide a 20-year warranty for U.S. sales and a 15-year warranty for non-U.S. sales on mattresses, each prorated for the last 10 years. Because our products have not been in use by our customers for the full warranty period, we rely on

the combination of historical experience and product testing for the development of our estimate for warranty claims. Our estimate of warranty claims could be adversely affected if our historical experience ultimately proves to be greater than the performance of the product in our product testing. We also provide 2-year to 3-year warranties on pillows. Estimated future obligations related to these products are provided by charges to operations in the period in which the related revenue is recognized.

Impairment of Goodwill, Intangibles and Long-Lived Assets

Goodwill reflected in our Consolidated Balance Sheets consists of the purchase price from the acquisition of Tempur World, Inc. in November 2002 (the Tempur Acquisition) in excess of the estimated fair values of identifiable net assets as of the date of the Tempur Acquisition. Intangibles consist of tradenames for various brands under which our products are sold. Other intangibles include our customer database for our direct channel, process technology and the formulation of our pressure-relieving TEMPUR® material.

We follow Statement of Financial Accounting Standards (SFAS) 142, “Goodwill and Other Intangible Assets”. SFAS 142 requires that intangible assets with estimable useful lives be amortized over their respective estimated useful lives to their estimated residual values and reviewed for impairment in accordance with SFAS 144. We perform an annual impairment test on all existing goodwill in the fourth quarter of each year. We performed the annual impairment test in the fourth quarter of 2005 on all existing goodwill and no impairment existed as of December 31, 2005. If facts and circumstances lead our management to believe that one of our other amortized intangible assets may be impaired, we will evaluate the extent to which the related cost is recoverable by comparing the future undiscounted cash flows estimated to be associated with that asset to the asset’s carrying amount and write-down that carrying amount to fair value to the extent necessary. Although we believe our estimates and judgments are reasonable, different assumptions and judgments could result in different impairment, if any, of some or all of our recorded Goodwill and indefinite-lived intangibles of $273.9 million as of December 31, 2005 and $276.9 million as of December 31, 2004.

In accordance with SFAS 144, “Accounting for the Impairment or Disposal of Long-lived Assets,” long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of long-lived assets is assessed by a comparison of the carrying amount of the asset to the estimated future undiscounted net cash flows expected to be generated by the asset. If estimated future undiscounted net cash flows are less than the carrying amount of the asset or group of assets, the asset is considered impaired and an expense is recorded in an amount required to reduce the carrying amount of the asset to its then fair value. Although we believe that our estimates of cash flows in our application of SFAS 144 are reasonable, and based upon all available information, including historical cash flow data about the prior use of our assets, such estimates nevertheless require substantial judgments and are based upon material assumptions about future events.

Income Tax Accounting

Income taxes are accounted for in accordance with SFAS 109, “Accounting for Income Taxes.” SFAS 109 requires recognition of deferred tax liabilities and assets for the expected future tax consequences of events that have been included in the financial statements or tax returns. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities. These deferred taxes are measured by applying the provisions of tax laws in effect at the balance sheet date.

We recognize deferred tax assets in our Consolidated Balance Sheets, and these deferred tax assets typically represent items deducted currently from operating income in the financial statements that will be deducted in future periods in tax returns. In accordance with SFAS 109, a valuation allowance is recorded against these deferred tax assets to reduce the total deferred tax assets to an amount that will, more likely than not, be realized in future periods. The valuation allowance is based, in part, on our estimate of future taxable income, the expected utilization of tax loss carryforwards, both domestic and foreign, and the expiration dates of tax loss carryforwards. Significant assumptions are used in developing the analysis of future taxable income for purposes

of determining the valuation allowance for deferred tax assets which, in our opinion, are reasonable under the circumstances.

Our consolidated effective income tax rate and related tax reserves are subject to uncertainties in the application of complex tax regulations from numerous tax jurisdictions around the world. We recognize liabilities for anticipated taxes in the U.S. and other tax jurisdictions based on our estimate of whether, and the extent to which, taxes are and could be due. While it is often difficult to predict the final outcome or the timing of the resolution of any particular tax matter, we believe that our reserves reflect the likely outcome of known tax contingencies. The resolution of tax matters for an amount that is different than the amount reserved would be recognized in our effective income tax rate during the period in which such resolution occurs.

Stock-Based Compensation

In accordance with SFAS 123, "Accounting for Stock Based Compensation" (SFAS 123), we elected to account for employee stock and option issuances under Accounting Principles Board Opinion 25, "Accounting for Stock Issued to Employees" (APB 25) through December 31, 2005. Under APB 25, no compensation expense was recognized in the statements of income for stock granted to employees and non-employee directors, if the exercise price at least equals the fair value of the underlying stock on the date of grant. In December 2004, the FASB issued SFAS 123 (revised 2004), "Share-Based Payment" (SFAS 123R) which is a revision of SFAS 123. SFAS 123R requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements based on their fair values. Pro forma disclosure will no longer be an alternative to financial statement recognition. In accordance with this revised standard, we plan to adopt SFAS 123R effective January 1, 2006 using the modified prospective method for the transition. In 2006, we expect to recognize approximately $1.2 million, pre-tax, in additional expense based on option grants outstanding as of December 31, 2005. The impact of adoption of SFAS 123R on future grants cannot be predicted at this time because it will depend on levels of share-based payments granted in the future. See Note 2 in the Notes to Consolidated Financial Statements for further discussion of SFAS 123R and the Company's adoption.

Impact of Recently Issued Accounting Pronouncements

See Note 2 of the Notes to Consolidated Financial Statements in ITEM 8 for a full description of recent accounting pronouncements, including the expected dates of adoption and estimated effects on results of operations and financial condition, which is incorporated herein by reference.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Currency Exposures

Our earnings, as a result of our global operating and financing activities, are exposed to changes in foreign currency exchange rates, which may adversely affect our results of operations and financial position. Our current outlook assumes no significant changes in currency values from current rates. Should currency rates change sharply, our results could be negatively impacted.

We protect a portion of our currency exchange exposure with foreign currency forward contracts. A sensitivity analysis indicates the potential loss in fair value on foreign currency forward contracts outstanding at December 31, 2005, resulting from a hypothetical 10% adverse change in all foreign currency exchange rates against the U.S. Dollar, is approximately $0.8 million. Such losses would be largely offset by gains from the revaluation or settlement of the underlying assets and liabilities that are being protected by the foreign currency forward contracts.

We do not apply hedge accounting to the foreign currency forward contracts used to offset currency-related changes in the fair value of foreign currency denominated assets and liabilities. These contracts are marked-to-market through earnings at the same time that the exposed assets and liabilities are remeasured through earnings.

Interest Rate Risk

We are exposed to changes in interest rates. Our 2005 Senior Credit Facility and the Series A bonds issued in connection with our New Mexico facility are variable-rate debt. We currently do not expect our debt levels under the 2005 Senior Credit Facility to have a materially different impact on our interest rate risk from that associated with our 2003 Senior Credit Facility.

Interest rate changes generally do not affect the market value of such debt but do impact the amount of our interest payments and therefore, our future earnings and cash flows, assuming other factors are held constant. On December 31, 2005, we had variable-rate debt of approximately $245.5 million. Holding other variables constant, including levels of indebtedness, a one hundred basis point increase in interest rates on our variable-rate debt would cause an estimated reduction in income before income taxes for the next year of approximately $2.5 million.

In January 2003, the Company paid premiums to purchase two three-year interest rate caps for the purpose of protecting cash flows associated with interest payments on $60.0 million of the existing variable-rate debt outstanding, at any given time, against LIBOR rates rising above 5%. Under the terms of the interest rate caps, the Company paid premiums to receive payments based on the difference between 3-month LIBOR and 5% during any period in which the 3-month LIBOR rate exceeds 5%. The fair value of the interest rate caps was included in Prepaid expenses and other current and the gains (losses) in fair value were charged to Accumulated other comprehensive income. The fair value and gains (losses) recognized on the interest rate caps are immaterial in all periods for which financial statements are presented. The interest rate caps will expire on March 31, 2006 and the Company has not yet determined if it will replace the interest rate caps upon expiration.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements required by this item are included in Part IV, ITEM 15 of this report and are presented beginning on page F-3.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

An evaluation was performed under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (Exchange Act), as of the end of the period covered by this report. Based on that evaluation, our management, including our principal executive officer and principal financial officer, concluded that our disclosure controls and procedures were effective as of December 31, 2005 and designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our principal executive and financial officers, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

There have not been any changes in our internal control over financial reporting during the year ended December 31, 2005 that have materially affected, or are reasonably likely to materially affect our internal control over financial reporting.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2005. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control—Integrated Framework*. Based on our assessment and those criteria, management believes that we maintained effective internal control over financial reporting as of December 31, 2005.

Our independent registered public accounting firm, Ernst & Young LLP, has issued a report on management's assessment of our internal control over financial reporting as of December 31, 2005. That report appears on page 41 of this report.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Tempur-Pedic International Inc. and Subsidiaries:

We have audited management's assessment, included in the accompanying "Management's Report on Internal Control Over Financial Reporting" that Tempur-Pedic International Inc. and Subsidiaries (the Company) maintained effective internal control over financial reporting as of December 31, 2005, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that the Company maintained effective internal control over financial reporting as of December 31, 2005, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2005, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Tempur-Pedic International Inc. and Subsidiaries as of December 31, 2005 and 2004, the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2005 and our report dated February 24, 2006 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Louisville, Kentucky
February 24, 2006

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Code of Ethics

We have adopted a Code of Business Conduct and Ethics (the Code) within the meaning of Item 406(b) of Regulation S-K. The Code applies to our employees, executive officers and directors. The Code is publicly available on our website at www.tempurpedic.com/ir.

If we make substantive amendments to the Code or grant any waiver, including any implicit waiver, we will disclose the nature of such amendment or waiver on our website or in a report on Form 8-K within four business days of such amendment or waiver.

Audit Committee Financial Expert

Our board of directors has determined that at least one person serving on the Audit Committee is an "audit committee financial expert" as defined under Item 401(h) of Regulation S-K. Francis A. Doyle, the Chairman of the Audit Committee, is an "audit committee financial expert" and is independent as defined under applicable SEC and NYSE rules.

Information relating to executive officers is set forth in Part I of this report following ITEM 4 under the caption "Executive Officers of the Registrant." The other information required by this Item is incorporated herein by reference from our definitive proxy statement for the 2006 Annual Meeting of Stockholders (the Proxy Statement) under the sections entitled "Proposal One—Election of Directors," "Board of Directors' Meetings, Committees of the Board and Related Matters—Committees of the Board" and "Executive Compensation and Related Information—Section 16(a) Beneficial Ownership Reporting Compliance".

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item is incorporated by reference from the Proxy Statement under the sections entitled "Executive Compensation and Related Information—Compensation of Executive Officers", "—Summary Compensation Table", "—Options/SAR Grants in Last Fiscal Year", "—Aggregated Options/SAR Exercises in Last Fiscal Year and FY-End Option/SAR Values", "—Compensation Committee Interlocks and Insider Participation" and "—Employment Arrangements, Termination of Employment Arrangements and Change in Control Arrangements" and under the section entitled "Board of Directors' Meetings, Committees of the Board and Related Matters—Director Compensation."

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDERS

The information required by this Item is incorporated by reference from the Proxy Statement under the section entitled "Principal Security Ownership and Certain Beneficial Owners", "Executive Compensation and Related Information" and "Equity Compensation Plan Information."

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by this Item is incorporated by reference from the Proxy Statement under the section entitled "Executive Compensation and Related Information—Certain Relationships and Related Transactions."

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this Item is incorporated by reference from the Proxy Statement under the sections entitled “Proposal Two— Ratification of Independent Auditors —Fees for Independent Auditors During Fiscal Year Ended December 31, 2005” and “—Policy on Audit Committee Pre-Approval of Audit and Non-Audit Services of Independent Auditor.”

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)

1. Financial statements:

   Report of Ernst & Young LLP, Independent Registered Public Accounting Firm

   Consolidated Statements of Income for the years ended December 31, 2005, 2004, and 2003

   Consolidated Balance Sheets as of December 31, 2005 and 2004

   Consolidated Statements of Stockholders’ Equity for the years ended December 31, 2005, 2004, and 2003

   Consolidated Statements of Cash Flows for the years ended December 31, 2005, 2004, and 2003

   Notes to Consolidated Financial Statements

2. Financial Statement Schedule:

   Schedule II—Valuation of Qualifying Accounts and Reserves

All other schedules have been omitted because they are inapplicable, not required, or the information is included elsewhere in the consolidated financial statements or notes thereto.

3. Exhibits:

The following is an index of the exhibits included in this report or incorporated herein by reference.

EXHIBIT INDEX

2.1	Agreement and Plan of Merger dated as of October 4, 2002, among Fagerdala Holding B.V., Fagerdala Industri A.B., Chesterfield Properties Limited, Viking Investments S.a.r.l., Robert B. Trussell, Jr., David C. Fogg, Jeffrey P. Heath, H. Thomas Bryant, Tempur-Pedic International Inc., TWI Acquisition Corp. and Tempur World, Inc.[1]
2.2	Contribution Agreement dated as of October 4, 2002, among TA IX, L.P., TA/Advent VIII L.P., TA/Atlantic and Pacific IV, L.P., TA Strategic Partners Fund A L.P., TA Strategic Partners Fund B L.P., TA Investors LLC, Friedman Fleischer & Lowe Capital Partners, LP, FFL Executive Partners, LP, Robert B. Trussell, Jr., David C. Fogg, H. Thomas Bryant, Jeffrey P. Heath, Mrs. R.B. Trussell, Jr. and Tempur-Pedic International Inc.[1]
3.1	Amended and Restated Certificate of Incorporation of Tempur-Pedic International Inc.[2]
3.2	Amended and Restated By-laws of Tempur-Pedic International Inc.[2]

4.1	Specimen certificate for shares of common stock.[2]
10.1	Credit Agreement, dated as of October 18, 2005, among Tempur-Pedic, Inc., Tempur Production USA, Inc., Dan-Foam ApS, certain other subsidiaries of Tempur-Pedic International, Inc., Bank of America, N.A., as administrative agent, Nordea Bank Denmark A/S, Suntrust Bank, and Fifth Third Bank.
10.2	Trust Indenture, dated September 1, 2005, by and between Bernalillo County and The Bank of New York Trust Company, N.A., as Trustee.
10.3	Lease Agreement, dated September 1, 2005, by and between Bernalillo County and Tempur Production USA, Inc.
10.4	Bond Purchase Agreement, dated October 26, 2005, by and among Banc of America Securities LLC, Tempur Production USA, Inc. and Bernalillo County.
10.5	Bond Purchase Agreement, dated October 26, 2005, by and among Tempur World LLC, Tempur Production USA, Inc. and Bernalillo County.
10.6	Remarketing and Interest Services Agreement, dated September 1, 2005, by and between Tempur Production USA, Inc. and Banc of America Securities LLC.
10.7	Mortgage, Assignment, Security Agreement and Fixture Filing, dated as of October 27, 2005, by and between Bernalillo County and Tempur Production USA, Inc.
10.8	Indenture dated as of August 15, 2003, among Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur-Pedic International Inc., Tempur World, Inc., Tempur World Holdings, Inc., Tempur-Pedic, Direct Response, Inc., Tempur-Medical, Inc. and Wells Fargo Bank Minnesota, National Association, as Trustee.[1]
10.8.1	Supplemental Indenture dated as of February 19, 2004, among Dawn Sleep Technologies, Inc., Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur-Pedic International Inc., Tempur World, LLC, Tempur World Holdings, LLC, Tempur-Pedic, Direct Response, Inc., Tempur-Pedic Medical, Inc. and Wells Fargo Bank, N.A., as Trustee.[3]
10.8.2	Supplemental Indenture dated as of April 5, 2004, among Tempur-Pedic Retail, Inc., Tempur-Pedic Professional, Inc., Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur-Pedic International Inc., Tempur World, LLC, Tempur World Holdings, LLC, Tempur-Pedic, Direct Response, Inc., Tempur-Pedic Medical, Inc., Dawn Sleep Technologies, Inc. and Wells Fargo Bank, N.A., as Trustee.[4]
10.9	Form of 10 1/4% Senior Subordinated Notes Due 2010 (included in Exhibit 10.8).[1]
10.10	Registration Rights Agreement dated as of August 15, 2003, among Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur-Pedic International Inc., Tempur World, Inc., Tempur World Holdings, Inc., Tempur-Pedic, Direct Response, Inc., Tempur-Medical, Inc., Lehman Brothers Inc, UBS Securities LLC and Credit Suisse First Boston LLC.[1]
10.11	Registration Rights Agreement dated as of November 1, 2002, among Tempur-Pedic International Inc., Friedman Fleischer & Lowe Capital Partners, LP, FFL Executive Partners, LP, TA IX, L.P., TA/Atlantic and Pacific IV, L.P., TA Strategic Partners Fund A L.P., TA Strategic Partners Fund B L.P., TA/Advent VIII L.P., TA Investors LLC, TA Subordinated Debt Fund, L.P., Gleacher Mezzanine Fund I, L.P., Gleacher Mezzanine Fund P, L.P. and the investors listed on Schedule I thereto.[1]

10.12	Tempur-Pedic International Inc. 2002 Stock Option Plan.[1][11]
10.13	Amended and Restated Employment and Noncompetition Agreement effective as of November 1, 2002, between Tempur World, Inc. and Robert B. Trussell, Jr.[1][11]
10.14	Amended and Restated Employment and Noncompetition Agreement effective as of November 1, 2002, between Tempur World, Inc. and David C. Fogg.[1][11]
10.15	Amended and Restated Employment and Noncompetition Agreement effective as of November 1, 2002, between Tempur World, Inc. and H. Thomas Bryant.[1][11]
10.16	Amended and Restated Employment and Noncompetition Agreement effective as of November 1, 2002, between Tempur World, Inc. and Jeffrey P. Heath.[1][11]
10.17	Separation Agreement dated as of July 3, 2003, among Tempur-Pedic International Inc., Tempur World, Inc. and Jeffrey P. Heath.[1][11]
10.18	Consultant's Agreement effective as of July 12, 2003, among Tempur-Pedic, Inc., Tempur World, Inc. and Jeffrey P. Heath.[1][11]
10.19	Employment and Noncompetition Agreement dated as of July 11, 2003, between Tempur World, Inc. and Dale E. Williams.[1][11]
10.20	Employment Agreement dated September 12, 2003, between Tempur International Limited and David Montgomery.[5][11]
10.21	Tempur-Pedic International Inc. 2003 Equity Incentive Plan.[2][11]
10.22	Tempur-Pedic International Inc. 2003 Employee Stock Purchase Plan. [2][11]
10.23	Letter Agreement dated October 20, 2003 from Tempur-Pedic International Inc. and Tempur World, Inc. to Mikael Magnusson and Dag Landvik, as Seller Representatives under the Merger Agreement, and their affiliates.[6][11]
10.24	Option Agreement dated as of July 13, 2004 between Tempur-Pedic International Inc. and Sir Paul Judge.[7][11]
10.25	Option Agreement dated as of March 12, 2004 between Tempur-Pedic International Inc. and Nancy F. Koehn.[8][11]
10.26	Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and Robert B. Trussell, Jr.[9][11]
10.27	Option Agreement dated as of February 24, 2003 between Tempur-Pedic International Inc. and David Montgomery.[9][11]
10.28	Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and David C. Fogg.[9][11]
10.29	Option Agreement dated as of July 7, 2003 between Tempur-Pedic International Inc. and Dale E. Williams.[9][11]
10.30	Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and Jeffrey B. Johnson.[9][11]
10.31	Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and Jeffrey B. Johnson.[9][11]
10.32	Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and H. Thomas Bryant.[9][11]
10.33	Option Agreement dated as of November 1, 2002 between Tempur-Pedic International Inc. and Jeffrey B. Johnson.[9][11]

10.34	Option Agreement dated as of November 1, 2002 between Tempur-Pedic International Inc. and Jeffrey P. Heath.[9][11]
10.35	Option Agreement dated as of November 1, 2002 between Tempur-Pedic International Inc. and H. Thomas Bryant.[9][11]
10.37	Option Agreement dated as of November 1, 2002 between Tempur-Pedic International Inc. and Robert B. Trussell, Jr.[9][11]
10.38	Option Agreement dated as of November 1, 2002 between Tempur-Pedic International Inc. and David C. Fogg.[9][11]
10.39	Option Agreement dated as of March 26, 2003 between Tempur-Pedic International Inc. and Francis A. Doyle.[9][11]
10.40	Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and Francis A. Doyle.[9][11]
10.41	Option Agreement dated as of September 30, 2003 between Tempur-Pedic International Inc. and David Montgomery.[9][11]
10.42	Employment and Noncompetition Agreement dated as of December 1, 2004, between Tempur-Pedic International Inc. and Matthew D. Clift. [10][11]
10.43	Option Agreement dated as of December 1, 2004 between Tempur-Pedic International Inc. and Matthew D. Clift. [10][11]
10.44	Restricted Stock Unit Award Agreement dated as of December 1, 2004 between Tempur-Pedic International Inc. and Matthew D. Clift. [10][11]
10.45	Option Agreement dated as of February 23, 2006 between Tempur-Pedic International Inc. and Matthew D. Clift.[11]
10.46	Option Agreement dated as of February 23, 2006 between Tempur-Pedic International Inc. and Sir Paul Judge. [11]
10.47	Option Agreement dated as of February 23, 2006 between Tempur-Pedic International Inc. and Nancy F. Koehn.[11]
21.1	Subsidiaries of Tempur-Pedic International Inc.
23.1	Consent of Ernst & Young LLP.
24.1	Power of Attorney of Tempur-Pedic International Inc. (included on the signature pages hereof).
31.1	Certification of Chief Executive Officer, pursuant to Securities Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer, pursuant to Securities Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1 *	Certification of Chief Executive Officer and Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(1) Incorporated by reference from the Registrant's registration statement on Form S-4 (File No. 333-109054) filed with the Commission on September 23, 2003.

(2) Incorporated by reference from Amendment No. 3 to the Registrant's registration statement on Form S-1 (File No. 333-109798) filed with the Commission on December 12, 2003.

(3) Incorporated by reference from Amendment No. 3 to the Registrant's registration statement on Form S-4 (File No. 333-109054) filed with the Commission on February 27, 2004.

(4) Incorporated by reference from Amendment No. 4 to the Registrant's registration statement on Form S-4 (File No. 333-109054) filed with the Commission on April 5, 2004.

(5) Incorporated by reference from Amendment No. 1 to the Registrant's registration statement on Form S-4 (File No. 333-109054) filed with the Commission on October 30, 2003.

(6) Incorporated by reference from Amendment No. 2 to the Registrant's registration statement on Form S-4 (File No. 333-109054) filed with the Commission on November 25, 2003.

(7) Incorporated by reference from the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 2, 2004.

(8) Incorporated by reference from the Registrant's Quarterly Report on Form 10-Q filed with the Commission on May 17, 2004.

(9) Incorporated by reference from Amendment No. 1 to the Registrant's registration statement on Form S-4 (File No. 333-120151) filed with the Commission on November 9, 2004.

(10) Incorporated by reference from the Registrant's Current Report on Form 8-K (File No. 001-31922) filed with the Commission on December 2, 2004.

(11) Indicates management contract or compensatory plan or arrangement.

* This exhibit shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that Section, nor shall it be deemed incorporated by reference in any filings under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in any filings.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

TEMPUR-PEDIC INTERNATIONAL INC.
(Registrant)

Date: March 13, 2006

By: /s/ ROBERT B. TRUSSELL, JR.
Robert B. Trussell, Jr.
Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Robert B. Trussell, Jr. and Dale E. Williams and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, from such person and in each person's name, place and stead, in any and all capacities, to sign any and all amendments to this Form 10-K and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his, her or their substitutes, may do or lawfully cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on the 13th of March, 2006, on behalf of the registrant and in the capacities indicated.

Signature	Capacity
/s/ ROBERT B. TRUSSELL, JR. **Robert B. Trussell, Jr.**	Chief Executive Officer (Principal Executive Officer) and Director
/s/ DALE E. WILLIAMS **Dale E. Williams**	Senior Vice President, Chief Financial Officer and Secretary (Principal Financial Officer)
/s/ JEFFREY B. JOHNSON **Jeffrey B. Johnson**	Corporate Controller, Chief Accounting Officer, Vice President and Assistant Secretary (Principal Accounting Officer)
/s/ JEFFREY S. BARBER **Jeffrey S. Barber**	Director
/s/ FRANCIS A. DOYLE **Francis A. Doyle**	Director
/s/ TULLY M. FRIEDMAN **Tully M. Friedman**	Director
/s/ NANCY F. KOEHN **Nancy F. Koehn**	Director
/s/ SIR PAUL JUDGE **Sir Paul Judge**	Director
/s/ CHRISTOPHER A. MASTO **Christopher A. Masto**	Director
/s/ P. ANDREWS MCLANE **P. Andrews McLane**	Director

INDEX TO HISTORICAL FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Tempur-Pedic International Inc. and Subsidiaries:

We have audited the accompanying consolidated balance sheets of Tempur-Pedic International Inc. and Subsidiaries (the Company) as of December 31, 2005 and 2004, the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2005. Our audits also included the financial statement schedule listed in the Index at Item 15(a) 2. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Tempur-Pedic International Inc. and Subsidiaries at December 31, 2005 and 2004, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2005, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company's internal control over financial reporting as of December 31, 2005, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 24, 2006 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Louisville, Kentucky
February 24, 2006

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF INCOME

(In thousands, except per share amounts)

	Year Ended December 31,		
	2005	**2004**	**2003**
Net sales	**$836,732**	$684,866	$479,135
Cost of sales	**412,790**	323,852	223,865
Gross profit	**423,942**	361,014	255,270
Selling and marketing expenses	**162,188**	138,735	106,700
General and administrative expenses	**68,204**	68,961	50,001
Research and development expenses	**2,696**	2,283	1,495
Operating income	**190,854**	151,035	97,074
Other income (expense), net:			
Interest expense, net	**(20,264)**	(23,550)	(20,521)
Loss on debt extinguishment	**(4,245)**	(5,381)	(13,669)
Other income (expense), net	**127**	83	(1,682)
Total other expense	**(24,382)**	(28,848)	(35,872)
Income before income taxes	**166,472**	122,187	61,202
Income tax provision	**67,143**	47,180	23,627
Net income	**$ 99,329**	$ 75,007	$ 37,575
Earnings per share:			
Basic	**$ 1.01**	$ 0.77	$ 3.32
Diluted	**$ 0.97**	$ 0.73	$ 0.39
Weighted average shares outstanding:			
Basic	**98,012**	97,695	11,330
Diluted	**102,144**	102,876	95,331

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(In thousands, except per share amounts)

	December 31, 2005	December 31, 2004
ASSETS		
Current Assets:		
Cash and cash equivalents	**$ 17,855**	$ 28,368
Accounts receivable, net	**111,726**	93,804
Inventories	**81,064**	66,162
Prepaid expenses and other current assets	**11,072**	12,523
Income taxes receivable	**19**	4,136
Deferred income taxes	**6,532**	8,853
Total Current Assets	**228,268**	213,846
Property, plant and equipment, net	**193,224**	138,457
Goodwill	**199,962**	200,810
Other intangible assets, net	**73,908**	76,122
Deferred financing and other non-current assets, net	**6,949**	10,388
Total Assets	**$ 702,311**	$639,623
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities:		
Accounts payable	**$ 33,639**	$ 34,771
Accrued expenses and other	**56,570**	55,600
Current portion of long-term debt	**30,770**	8,758
Total Current Liabilities	**120,979**	99,129
Long-term debt	**313,711**	280,913
Deferred income taxes	**40,386**	43,771
Other non-current liabilities	**906**	2,189
Total Liabilities	**475,982**	426,002
Commitments and Contingencies (see Note 8)		
Stockholders' Equity:		
Common stock, $0.01 par value, 300,000 shares authorized; 99,215 and 98,194 shares issued in 2005 and in 2004, respectively	**992**	982
Additional paid in capital	**255,369**	253,134
Deferred stock compensation, net of amortization of $12,312 and $9,429 as of 2005 and 2004, respectively	**(2,196)**	(5,079)
Retained earnings (deficit)	**46,245**	(52,623)
Accumulated other comprehensive income	**1,137**	17,207
Treasury stock, at cost; 6,767 shares in 2005	**(75,218)**	—
Total Stockholders' Equity	**226,329**	213,621
Total Liabilities and Stockholders' Equity	**$ 702,311**	$639,623

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(In thousands)

	Common Stock				Class B-1 Common				Accumulated Other		
	Shares	At Par	Preferred Stock	Additional Paid in Capital	Stock Warrants	Notes Receivable	Deferred Stock Compensation	Retained (Deficit) / Earnings	Comprehensive Income	Treasury Stock	Total
Balance, December 31, 2002		$—	$ 148,422	$ 4,864	$ 2,348	$ (100)	$ (141)	$ (5,205)	$ 1,418	$ —	$ 151,606
Comprehensive Income:											
Net income								37,575			37,575
Foreign currency adjustments, net of tax and other									6,937		6,937
Total Comprehensive Income								37,575	6,937		44,512
Dividends paid to stockholders								(160,000)			(160,000)
Exercise of stock options				3,071							3,071
Conversion to common stock upon IPO	91,068	910	(148,422)	149,860	(2,348)						—
IPO transaction costs				(2,612)							(2,612)
Issuance of common stock upon IPO	6,250	63		81,750							81,813
Unearned stock-based compensation				13,013			(13,013)				—
Amortization of unearned stock-based compensation							4,219				4,219
Notes receivable payment						100					100
Balance, December 31, 2003	97,318	$973	$ —	$ 249,946	$ —	$ —	$ (8,935)	$(127,630)	$ 8,355	$ —	$ 122,709
Comprehensive Income:											
Net income								75,007			75,007
Foreign currency adjustments, net of tax and other									8,852		8,852
Total Comprehensive Income								75,007	8,852		83,859
Exercise of stock options	876	9		1,837							1,846
Unearned stock-based compensation				1,351			(1,351)				—
Amortization of unearned stock-based compensation							5,207				5,207
Balance, December 31, 2004	98,194	$982	$ —	$ 253,134	$ —	$ —	$ (5,079)	$ (52,623)	$ 17,207	$ —	$ 213,621
Comprehensive Income:											
Net income								99,329			99,329
Foreign currency adjustments, net of tax and other									(16,070)		(16,070)
Total Comprehensive Income								99,329	(16,070)		83,259
Exercise of stock options	1,094	10		2,220				(461)		782	2,551
Tax adjustments related to restricted stock unit valuation				15							15
Treasury stock repurchased	(6,840)									(76,000)	(76,000)
Amortization of unearned stock- based compensation							2,883				2,883
Balance, December 31, 2005	92,448	$992	$ —	$ 255,369	$ —	$ —	$ (2,196)	$ 46,245	$ 1,137	$ (75,218)	$ 226,329

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2005	**2004**	**2003**
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	**$ 99,329**	$ 75,007	$ 37,575
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	**24,999**	23,312	19,756
Amortization of deferred financing costs	**2,153**	3,488	1,986
Amortization of original issue discount	**—**	—	281
Loss on extinguishment of debt	**4,245**	—	9,971
Amortization of stock-based compensation	**2,883**	5,207	4,219
Allowance for doubtful accounts	**2,666**	3,681	2,090
Deferred income taxes	**4,657**	4,685	(4,829)
Foreign currency adjustments	**1,022**	866	(4,143)
Loss on sale of equipment and other	**754**	434	123
Changes in operating assets and liabilities:			
Accounts receivable	**(27,273)**	(32,996)	(14,095)
Inventories	**(18,448)**	(6,292)	(16,978)
Prepaid expenses and other current assets	**258**	(6,520)	(3,443)
Accounts payable	**1,653**	6,667	5,303
Accrued expenses and other	**(1, 772)**	1,316	8,094
Income taxes	**5,123**	(1,889)	1,040
Net cash provided by operating activities	**102,249**	76,966	46,950
CASH FLOWS FROM INVESTING ACTIVITIES:			
Payments for trademarks and other intellectual property	**(2,014)**	(342)	—
Purchases of property, plant and equipment	**(84,881)**	(38,419)	(32,597)
Proceeds from sale of equipment	**311**	410	924
Payments on earn out to former owners	**—**	—	(39,434)
Net cash used by investing activities	**(86,584)**	(38,351)	(71,107)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from long-term Revolving Credit Facility	**368,500**	50,512	7,915
Repayments of long-term Revolving Credit Facility	**(302,500)**	(48,670)	(24,265)
Proceeds from issuance of long-term debt	**109,858**	—	489,260
Repayments of long-term debt	**(173,688)**	(37,688)	(298,063)
Proceeds from issuance of Industrial Revenue Bonds	**53,925**	—	—
Repayments of Senior Subordinated Notes	**—**	(52,500)	—
Cash held in trust for repayment of Senior Subordinated Notes	**—**	60,243	(60,243)
Common stock issued, including reissuances of treasury stock	**2,551**	1,847	83,668
Treasury stock repurchased	**(76,000)**	—	—
Payments of dividends to shareholders	**—**	—	(160,000)
Payments for deferred financing costs	**(2,601)**	(2,251)	(11,698)
Net cash (used) / provided by financing activities	**(19,955)**	(28,507)	26,574
NET EFFECT OF EXCHANGE RATE CHANGES ON CASH	**(6,223)**	4,030	(841)
(Decrease) / increase in cash and cash equivalents	**(10,513)**	14,138	1,576
CASH AND CASH EQUIVALENTS, beginning of year	**28,368**	14,230	12,654
CASH AND CASH EQUIVALENTS, end of year	**$ 17,855**	$ 28,368	$ 14,230
Supplemental cash flow information:			
Cash paid during the period for:			
Interest	**$ 18,759**	$ 23,383	$ 15,205
Income taxes, net of refunds	**57,445**	49,978	33,146

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(In thousands, except per share amounts)

(1) Summary of Significant Accounting Policies

(a) *Basis of Presentation and Description of Business*—Tempur-Pedic International Inc. and subsidiaries is a U.S.-based, multinational corporation incorporated in Delaware and is referred to herein with its subsidiaries as its subsidiaries as "the Company". Tempur-Pedic International was formed in 2002 to acquire Tempur World, Inc., or Tempur World. This acquisition occurred effective November 1, 2002 and is referred to herein as the "Tempur Acquisition".

The Company manufactures, markets, and sells advanced viscoelastic products including pillows, mattresses, and other related products. The Company manufactures essentially all of its products at two manufacturing facilities, with one located in Denmark and one in the U.S. The Company has sales and distribution companies operating in the U.S., Europe, and Asia Pacific. In addition, the Company has third party distributor arrangements in certain other countries where it does not have distribution companies. The Company sells its products in 60 countries and extends credit based on the creditworthiness of its customers.

(b) *Reclassifications*—Certain prior period amounts have been reclassified to conform to the 2005 presentation including the presentation of Income taxes receivable in the Consolidated Balance Sheets and the presentation of Loss on debt extinguishment and certain borrowings and repayments of long-term debt in the Consolidated Statements of Cash Flows. These changes do not affect previously reported subtotals within the Consolidated Balance Sheets or the Consolidated Statements of Cash Flows for any period presented.

(c) *Basis of Consolidation*—The accompanying financial statements include the accounts of Tempur-Pedic International and its subsidiaries. All subsidiaries are wholly-owned. All material intercompany balances and transactions have been eliminated.

(d) *Use of Estimates*—The preparation of financial statements in conformity with accounting principles generally accepted in the United States (U.S. GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

(e) *Foreign Currency Translation*—Assets and liabilities of non-U.S. subsidiaries, whose functional currency is the local currency, are translated at period-end exchange rates. Income and expense items are translated at the average rates of exchange prevailing during the period. The adjustment resulting from translating the financial statements of such foreign subsidiaries are included in Accumulated other comprehensive income, a component of Stockholders' Equity. Foreign currency transaction gains and losses are reported in results of operations.

(f) *Financial Instruments and Hedging*—Derivative financial instruments are used within the normal course of business principally to manage foreign currency exchange rate risk. These instruments are generally short term in nature and are subject to fluctuations in foreign exchange rates and credit risk. Credit risk is managed through the selection of sound financial institutions as counterparties. The changes in fair market value of foreign exchange derivatives are recognized currently through earnings. The changes in fair market value of derivative financial instruments used to manage interest rates are recognized through Accumulated other comprehensive income.

The carrying value of Cash and cash equivalents, Accounts receivable, and Accounts payable approximate fair value because of the short-term maturity of those instruments. The fair value of the Senior Subordinated Notes, as defined in Note (4)(d), is based on pricing models using current market rates.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

The estimated fair value of the Company's financial instruments is as follows:

	December 31,			
	2005		2004	
	Carrying Amount	Estimated Fair Market Value	Carrying Amount	Estimated Fair Market Value
Senior Subordinated Notes	**$97,500**	**$ 105,056**	$97,500	$ 112,613
Foreign currency contracts	**(7)**	**(7)**	453	453

In January 2004, the Company used $60,243 in Restricted cash for the redemption of the principal amount of $52,500 of Senior Subordinated Notes, the payment of a redemption premium of $5,381 and accrued interest expense of $2,362. The Company reflected the $5,381 redemption premium as a Loss on debt extinguishment included in Other income (expense), net for the year ended December 31, 2004.

(g) *Cash and Cash Equivalents*—Cash and cash equivalents consist of all investments with initial maturities of three months or less.

(h) *Inventories*—Inventories are stated at the lower of cost or market, determined by the first-in, first-out method and consisted of the following:

	December 31,	
	2005	2004
Finished goods	**$ 61,071**	$ 42,848
Work-in-process	**7,427**	8,086
Raw materials and supplies	**12,566**	15,228
	$ 81,064	$ 66,162

(i) *Property, Plant and Equipment*—Property, plant and equipment are carried at cost at acquisition date and depreciated using the straight-line method over their estimated useful lives as follows:

	Estimated Useful Lives
Buildings	25-30 years
Computer equipment	3-5 years
Leasehold improvements	4-7 years
Machinery equipment	3-7 years
Office furniture and fixtures	5-7 years
Autos	3-5 years

Leasehold improvements are amortized over the shorter of the life of the lease or seven years. Depreciation expense for Tempur-Pedic International was $21,022; $19,108; and $14,686 for the years ended December 31, 2005, 2004, and 2003, respectively.

(j) *Long-Lived Assets*—In accordance with Statement of Financial Accounting Standards (SFAS) 144, "Accounting for the Impairment or Disposal of Long-lived Assets," long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of long-lived assets is assessed by a comparison of the carrying amount of the

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

asset to the estimated future undiscounted net cash flows expected to be generated by the asset. If estimated future undiscounted net cash flows are less than the carrying amount of the asset or group of assets, the asset is considered impaired and an expense is recorded in an amount required to reduce the carrying amount of the asset to its then fair value.

(k) *Goodwill and Other Intangible Assets*—The Company follows SFAS 142, "Goodwill and Other Intangible Assets". SFAS 142 requires that intangible assets with estimable useful lives be amortized over their respective estimated useful lives to their estimated residual values and reviewed for impairment in accordance with SFAS 144. The Company performs an annual impairment test on all existing goodwill in the fourth quarter of each year. The Company performed the annual impairment test in the fourth quarter of 2005 on all existing goodwill and no impairment existed as of December 31, 2005. If facts and circumstances lead the Company's management to believe that one of the Company's other amortized intangible assets may be impaired, the Company will evaluate the extent to which the related cost is recoverable by comparing the future undiscounted cash flows estimated to be associated with that asset to the asset's carrying amount and write-down that carrying amount to fair value to the extent necessary.

The following table summarizes information relating to the Company's Other intangible assets:

		December 31, 2005			December 31, 2004		
	Useful Lives (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Unamortized indefinite life intangible assets:							
Trademarks		**$ 55,000**	**$ —**	**$ 55,000**	$ 55,000	$ —	$ 55,000
Amortized intangible assets:							
Technology	10	**$ 16,000**	**$ 5,067**	**$ 10,933**	$ 16,000	$ 3,467	$ 12,533
Patents	5-20	**5,968**	**3,234**	**2,734**	5,048	2,172	2,876
Customer database	5	**4,200**	**2,660**	**1,540**	4,200	1,820	2,380
Foam formula	10	**3,700**	**1,172**	**2,528**	3,700	802	2,898
Non-competition agreements and other	5	**3,146**	**1,973**	**1,173**	2,325	1,890	435
Total		**$ 88,014**	**$ 14,106**	**$ 73,908**	$ 86,273	$ 10,151	$ 76,122

Amortization expense relating to intangible assets for Tempur-Pedic International was $3,977; $4,207; and $5,064 for the years ended December 31, 2005, 2004, and 2003, respectively.

Annual amortization of intangible assets is expected to be as follows:

Year Ending December 31,	
2006	$4,037
2007	3,861
2008	2,463
2009	2,036
2010	2,007

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

The changes in the carrying amount of Goodwill for the year ended December 31, 2005 are related to changes in amounts for foreign currency translation and tax adjustments related to the Tempur Acquisition, including the utilization of pre-acquisition net operating losses and adjustments relating to pre-acquisition income tax contingencies as follows:

Balance as of December 31, 2004	$200,810
Foreign currency translation adjustments	697
Tax adjustments related to the Tempur Acquisition	(1,545)
Balance as of December 31, 2005	$199,962

Goodwill as of December 31, 2005 and 2004 has been allocated to the Domestic and International segments as follows:

	December 31, 2005	December 31, 2004
Domestic	**$ 89,452**	$ 87,627
International	**110,510**	113,183
	$ 199,962	$ 200,810

(l) *Software*—Preliminary project stage costs incurred are expensed and, thereafter, costs incurred in the developing or obtaining of internal use software are capitalized. Certain costs, such as maintenance and training, are expensed as incurred. Capitalized costs are amortized over a period of not more than five years and are subject to impairment evaluation in accordance with SFAS 144. Amounts capitalized for software are included in Property, plant and equipment, net.

(m) *Accrued Sales Returns*—Estimated sales returns are provided at the time of sale based on historical sales returns. The Company allows product returns ranging of up to 120 days following a sale. Accrued sales returns are included in Accrued expenses and other in the accompanying Consolidated Balance Sheets.

The Company had the following activity for sales returns from December 31, 2003 to December 31, 2005:

Balance as of December 31, 2003	$ 5,456
Amounts accrued	38,425
Returns charged to accrual	(37,319)
Balance as of December 31, 2004	6,562
Amounts accrued	43,639
Returns charged to accrual	(43,897)
Balance as of December 31, 2005	$ 6,304

(n) *Warranties*—The Company provides a 20-year warranty for U.S. sales and a 15-year warranty for non-U.S. sales on mattresses, each prorated for the last 10 years. The Company also provides a 2-year to 3-year warranty on pillows. Estimated future obligations related to these products are provided by charges to operations in the period in which the related revenue is recognized. Warranties are included in Accrued expenses and other in the Consolidated Balance Sheets.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

The Company had the following activity for warranties from December 31, 2003 to December 31, 2005:

Balance as of December 31, 2003	$ 4,020
Amounts accrued	2,483
Warranties charged to accrual	(2,754)
Balance as of December 31, 2004	3,749
Amounts accrued	4,958
Warranties charged to accrual	(5,600)
Balance as of December 31, 2005	$ 3,107

(o) *Income Taxes*—Deferred tax assets and liabilities are recognized for the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. In accordance with SFAS 5, “Accounting for Contingencies”, the Company accrues for probable foreign and domestic tax obligations as required by facts and circumstances in the various regulatory environments.

(p) *Revenue Recognition*—Sales of products are recognized when the products are shipped to customers and the risks and rewards of ownership are transferred. No collateral is required on sales made in the normal course of business. The allowance for doubtful accounts is the Company’s best estimate of the amount of probable credit losses in the Company’s existing accounts receivable. The Company determines the allowance based on historical write-off experience. The Company reviews the adequacy of its allowance for doubtful accounts quarterly. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. Allowance for doubtful accounts was $5,436 and $5,508 included in Accounts receivable, net in the accompanying Consolidated Balance Sheets as of December 31, 2005 and 2004, respectively. Deposits made by customers are recorded as a liability and recognized as a sale when product is shipped. The Company had $454 and $1,890 of deferred revenue included in Accrued expenses and other in the accompanying Consolidated Balance Sheets as of December 31, 2005 and 2004, respectively.

The Company reflects all amounts billed to customers for shipping and handling in Net sales and the costs incurred from shipping and handling product in Cost of sales. Amounts included in Net sales for shipping and handling were $23,570; $23,417; and $18,415 for the years ended December 31, 2005, 2004, and 2003, respectively. Amounts included in Cost of sales for shipping and handling were $75,527; $58,819; and 43,624 for the years ended December 31, 2005, 2004, and 2003, respectively.

In connection with customer purchases financed under an extended financing program with certain third party financiers (Card Servicers), the Card Servicer pays the Company an amount equal to the total amount of such purchases, net of a non-refundable financing fee as well as an interest bearing holdback of 15% (to be released upon ultimate collection) of certain amounts financed with recourse under the program. Amounts associated with this limited program are immaterial in all periods for which financial statements are presented.

(q) *Advertising Costs*—The Company expenses advertising costs as incurred except for production costs and advance payments, which are deferred and expensed when advertisements run for the first time. Direct response advance payments are deferred and amortized over the life of the program. Advertising costs charged to expense

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

were $91,229; $70,453; and $65,180 for the years ended December 31, 2005, 2004, and 2003, respectively. Advertising costs charged to expense for the year ended December 31, 2003 includes $16,328 of show and exhibition costs. For all periods subsequent to 2003, show and exhibition costs are not included in advertising costs. Advertising costs deferred and included in Prepaid expenses and other current assets in the accompanying Consolidated Balance Sheets were $6,064 and $6,228 and as of December 31, 2005 and 2004, respectively.

(r) *Research and Development Expenses*—Research and development expenses for new products are expensed as they are incurred.

(s) *Stock-Based Compensation*—In accordance with SFAS 123, "Accounting for Stock Based Compensation" (SFAS 123), the Company has elected to account for employee stock and option issuances under Accounting Principles Board Opinion 25, "Accounting for Stock Issued to Employees" (APB 25) through December 31, 2005. Under APB 25, no compensation expense was recognized in the statements of income for stock granted to employees and non-employee directors, if the exercise price at least equals the fair value of the underlying stock on the date of grant. In December 2004, the FASB issued SFAS 123 (revised 2004), "Share-Based Payment" (SFAS 123R) which is a revision of SFAS 123. SFAS 123R requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements based on their fair values. Pro forma disclosure will no longer be an alternative to financial statement recognition. In accordance with this revised standard, the Company plans to adopt SFAS 123R effective January 1, 2006 using the modified prospective method for the transition. See Note 2 for further discussion of SFAS 123R and the Company's adoption.

Stock options are granted under various stock compensation programs to employees. For purposes of pro forma disclosures through December 31, 2005, the estimated fair value of the options was amortized to expense over the options' vesting period in accordance with SFAS 123.

Pro forma information in accordance with SFAS 123 for the Company for the years ended December 31, 2005, 2004, and 2003 are as follows:

	Year Ended December 31,		
	2005	**2004**	**2003**
Net income as reported	**$99,329**	$75,007	$37,575
Add: Stock-based employee compensation expense included in reported net income	**2,720**	5,193	4,078
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards	**(9,990)**	(8,735)	(5,469)
Pro forma net income	**$92,059**	$71,465	$36,184
Earnings per share:			
Basic—as reported	**$ 1.01**	$ 0.77	$ 3.32
Diluted—as reported	**$ 0.97**	$ 0.73	$ 0.39
Basic—Pro forma	**$ 0.94**	$ 0.73	$ 3.19
Diluted—Pro forma	**$ 0.90**	$ 0.70	$ 0.38

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

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Certain options granted during the year prior to the Company's initial public offering (pre-IPO options) have exercise prices that are less than the deemed market value of the underlying common stock at the date of grant. The resulting unearned stock-based compensation is amortized to compensation expense over the respective vesting term, based on the "graded vesting" methodology, and is not subject to the amortization methods the Company has adopted pursuant to SFAS 123R. As of December 31, 2005 and 2004, the Company had remaining unearned stock-based compensation of $2,196 and $5,079, respectively, related to the pre-IPO options and restricted stock units. The Company recorded $2,883 and $5,207 of compensation expense for the years ended December 31, 2005 and 2004, respectively, related to amortization of this stock-based compensation. The future amortization of the remaining unearned stock-based compensation costs as of December 31, 2005 will be $1,543 in 2006 and $653 in 2007.

Additionally, in December 2005, the Company accelerated the vesting of certain unvested incentive stock options which had exercise prices greater than the fair market value of the stock on the date of acceleration. Options to purchase approximately 467 shares of common stock, or approximately 18% of the Company's outstanding unvested options, were subject to the acceleration. Options subject to the acceleration had exercise prices ranging from $13.94 to $24.40 per share and a weighted average remaining life of 9 years. The weighted average exercise price of the options subject to the acceleration was $18.51. The purpose of the acceleration was to enable the Company to avoid recognizing compensation expense associated with these options in future periods in its Consolidated Statements of Income, upon adoption of SFAS 123R. The acceleration resulted in an increase of $2,842 in the pro forma employee stock option stock-based compensation expense shown above.

(t) *Treasury Stock*—Shares repurchased under the Company's Share Repurchase Program are held in treasury for general corporate purposes, including issuances under various employee stock option plans. Treasury shares are accounted for under the cost method and reported as a reduction of Stockholders' equity.

(2) Recently Issued Accounting Pronouncements

In December 2004, the Financial Accounting Standards Board (FASB) issued SFAS 123R, Share-Based Payment. SFAS 123R will require all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements based on their fair values. Pro forma disclosure will no longer be an alternative to financial statement recognition. On April 14, 2005, the U.S. Securities and Exchange Commission (SEC) approved a delay to the effective date of SFAS 123R. Under the new SEC rule, SFAS 123R is effective for annual periods that begin after June 15, 2005.

SFAS 123R permits public companies to adopt its requirements using one of two methods. The first adoption method is a "modified prospective" approach in which compensation cost is recognized beginning with the effective date (i) based on the requirements of SFAS 123R for all share-based payments granted after the effective date and (ii) based on the requirements of SFAS 123 for all share-based payments granted to employees prior to the effective date of SFAS 123R that remain unvested on the effective date. The second adoption method is a "modified retrospective" approach, which includes the requirements of the modified prospective method described above, but also permits entities to restate, based on the amounts previously recognized under SFAS 123 for purposes of pro forma disclosures, either (i) all prior periods presented or (ii) prior interim periods in the year of adoption.

The Company plans to adopt SFAS 123R effective January 1, 2006 using the modified prospective method for the transition and expects to recognize approximately $1,227, pre-tax, in additional expense in 2006 based on option grants outstanding as of December 31, 2005. The impact of adoption of SFAS 123R on future grants cannot be predicted at this time because it will depend on levels of share-based payments granted in the

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future. Additionally, the Company will continue to use the Black-Scholes option pricing model to calculate the fair value of share based payments under SFAS 123R. Compensation amounts so determined will be expensed over the applicable estimated life.

FASB Staff Position (FSP) 109-2, "Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creation Act of 2004" (FSP 109-2), provides guidance under SFAS 109, "Accounting for Income Taxes," with respect to recording the potential impact of the repatriation provisions of the American Jobs Creation Act of 2004 (the Jobs Creation Act) on income tax expense and deferred tax liabilities. The Jobs Creation Act was enacted on October 22, 2004. FSP 109-2 states that an enterprise is allowed time beyond the financial reporting period of enactment to evaluate the effect of the Jobs Creation Act on its plan for reinvestment or repatriation of foreign earnings for purposes of applying SFAS 109. Under the provisions of the Jobs Creation Act, the Company's Chief Executive Officer and Board of Directors approved two domestic reinvestment plans to repatriate $115,000 and $40,650, respectively, in foreign earnings. On October 19, 2005, the Company repatriated the planned dividend of $115,000. The Company repatriated an additional $40,650 on December 19, 2005, for a total repatriation of $155,650. Proceeds from the repatriation were reinvested in the Company's U.S. operations consistent with the objectives of the Jobs Creation Act. See further discussion of the Jobs Creation Act in Note 10.

In May 2005, the FASB issued SFAS No. 154, "Accounting Changes and Error Corrections" (SFAS 154). SFAS 154 is a replacement of Accounting Principles Board No. 20, "Accounting Changes" and FASB Statement No. 3 "Reporting Accounting Changes in Interim Financial Statements." SFAS 154 provides guidance on the accounting for and reporting of accounting changes and error corrections. It establishes retrospective application as the required method for reporting a change in accounting principle. SFAS 154 provides guidance for determining whether retrospective application of a change in accounting principle is impracticable and for reporting a change when retrospective application is impracticable. The reporting of a correction of an error by restating previously issued financial statements is also addressed by SFAS 154. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 31, 2005. The Company will adopt this pronouncement beginning in fiscal year 2006.

In November 2004, the FASB issued SFAS 151, "Inventory Costs" (SFAS 151), which is an amendment of ARB 43, Chapter 4. SFAS 151 clarifies that abnormal amounts of idle facility expense, freight, handling costs, and wasted materials (spoilage) should be recognized as current-period charges and requires the allocation of fixed production overheads to inventory based on the normal capacity of the production facilities. SFAS No. 151 is effective for inventory costs incurred during fiscal years beginning after June 15, 2005. The Company does not expect the adoption of this statement to have a material effect on the Company's consolidated financial position and results of operations.

(3) Property, Plant and Equipment

Property, plant and equipment, net consisted of the following:

	December 31,	
	2005	**2004**
Land and buildings	**$ 67,193**	$ 71,606
Machinery and equipment, furniture and fixtures, and other	**96,298**	92,262
Construction in progress	**82,775**	12,330
	246,266	176,198
Accumulated depreciation	**(53,042)**	(37,741)
	$193,224	$138,457

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Construction in progress includes capitalized interest costs of $2,567 and $294 for the years ended December 31, 2005 and 2004, respectively, in connection with the construction of assets. Additionally, Construction in progress includes $843 that is included in Accounts payable as of December 31, 2005 and has been excluded from Cash flows from investing activities in the Consolidated Statements of Cash Flows.

(4) Long-term Debt

(a) *Long-term Debt*—Long-term debt for the Company consisted of the following:

	December 31, 2005	December 31, 2004
2003 Senior Credit Facility:		
U.S. Term Loan A payable to lenders, interest at Index Rate or IBOR plus applicable margin (4.81% as of December 31, 2004)	**$ —**	$ 8,966
U.S. Term Loan B payable to lenders, interest at Index Rate or IBOR plus margin (4.81% as of December 31, 2004)	**—**	132,975
European Term Loan A (USD Denominated) payable to a lender, interest at Index Rate or IBOR plus margin (4.81% as of December 31, 2004)	**—**	17,642
European Term Loan A (EUR Denominated) payable to lenders, interest at Index Rate or IBOR plus margin (4.43% as of December 31, 2004)	**—**	13,577
U.S. Long-Term Revolving Credit Facility payable to lenders, interest at Index Rate or IBOR plus applicable margin (4.75% as of December 31, 2004)	**—**	17,000
2005 Senior Credit Facility:		
Foreign Term Loan (EUR Denominated) payable to lenders, interest at Index Rate or IBOR plus margin (3.46% as of December 31, 2005), principal payments due quarterly through June 30, 2010 with a final payment on October 18, 2010	**108,565**	—
Domestic Long-Term Revolving Credit Facility payable to lenders, interest at Index Rate or IBOR plus applicable margin (5.28% as of December 31, 2005), commitment through and due October 18, 2010	**83,000**	—
2005 Industrial Revenue Bonds:		
Variable Rate Industrial Revenue Bonds Series 2005A, interest rate determined by remarketing agent (4.35% as of December 31, 2005), interest due monthly and principal due quarterly through September 1, 2030	**53,925**	—
Senior Subordinated Notes:		
U.S. Senior Subordinated Notes payable to institutional investors, interest at 10.25%, due August 15, 2010	**97,500**	97,500
Other:		
Mortgages payable to a bank, secured by certain property, plant and equipment and other assets, bearing fixed interest 4.0% to 5.1%	**1,491**	2,011
	344,481	289,671
Less: Current portion	**(30,770)**	(8,758)
Long-term debt	**$313,711**	$280,913

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The long-term debt of the Company is scheduled to mature as follows:

Year Ending December 31,	
2006	$ 30,770
2007	30,770
2008	30,770
2009	30,667
2010	205,453
Thereafter	16,051
Total	$ 344,481

(b) *Secured Credit Financing*—On October 18, 2005, Tempur-Pedic International Inc. entered into a credit agreement (the 2005 Senior Credit Facility) with Tempur-Pedic, Inc., Tempur Production USA, Inc., Dan-Foam ApS, certain other subsidiaries of Tempur-Pedic International, Inc., and Bank of America, N.A., Fifth Third Bank, Nordea Bank Danmark, A/S and Suntrust Bank. The Company used proceeds from the 2005 Senior Credit Facility to pay off amounts outstanding under its 2003 Senior Credit Facility and an unsecured revolving credit facility, among other things. The 2003 Senior Credit Facility was terminated upon repayment, and the Company recorded a one-time, non-cash write-off of $3,528 in October 2005 related to deferred financing charges from its 2003 Senior Credit Facility.

The 2005 Senior Credit Facility consists of domestic and foreign credit facilities that provide for the incurrence of indebtedness up to an aggregate principal amount of $340,000. The domestic credit facility is a five-year, $200,000 revolving credit facility (Domestic Revolver). The foreign credit facilities consist of a $30,000 revolving credit facility (Foreign Revolver) and $110,000 term loan (Foreign Term Loan). The various credit facilities bear interest at a rate equal to the 2005 Senior Credit Facility's applicable margin, as determined in accordance with a performance pricing grid set forth in the 2005 Senior Credit Facility, plus one of the following indexes: (i) LIBOR and (ii) for U.S. dollar-denominated loans only, a base rate (defined as the higher of (a) the Bank of America prime rate and (b) the Federal Funds rate plus .50%). The Company also pays an annual facility fee on the total amount of the 2005 Senior Credit Facility. The facility fee is calculated based on the consolidated leverage ratio and ranges from .175% to .35%.

The 2005 Senior Credit Facility is guaranteed by Tempur-Pedic International Inc., Tempur World, LLC and Tempur World Holdings, LLC, as well as certain other subsidiaries of the Company, and is secured by certain fixed and intangible assets of Dan Foam ApS and substantially all U.S. assets. The maturity date of the 2005 Senior Credit Facility is October 18, 2010. The 2005 Senior Credit Facility contains certain financial covenants and requirements affecting the Company and its subsidiaries, among the most significant of which are a fixed charge coverage ratio requirement and a consolidated leverage ratio requirement. The Company was in compliance with all covenants as of December 31, 2005.

At December 31, 2005, the Company had a total of $230,000 of long-term revolving credit facilities under the 2005 Senior Credit Facility, which was comprised of the $200,000 Domestic Revolver and the $30,000 Foreign Revolver (collectively, the Revolvers). The Revolvers provide for the issuance of letters of credit which, when issued, constitute usage and reduce availability under the Revolvers. The aggregate amount of letters of credit outstanding under the Revolvers were $56,512 at December 31, 2005. After giving effect to letters of credit and $83,000 in borrowings under the Domestic Revolver, total availability under the Revolvers was $90,488 at December 31, 2005. There were no borrowings under the Foreign Revolver as of December 31, 2005.

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As of December 31, 2005, Dan Foam ApS had borrowed all amounts available under the Foreign Term Loan. Dan-Foam ApS used these borrowings and cash on hand to fund the repatriation of foreign earnings of $155,650 during 2005. See Note 10 for further discussion of the repatriation of foreign earnings under the Jobs Creation Act.

On February 8, 2006, Tempur-Pedic International Inc. entered into an amendment to its 2005 Senior Credit Facility, with Tempur-Pedic International Inc. and certain of its subsidiaries and a syndicate of banks, including Bank of America, N.A. The amendment, among other things, (i) increases the amount available under the 2005 Senior Credit Facility's Domestic Revolver from $200,000 to $260,000, (ii) decreases the amount available under the 2005 Senior Credit Facility's Foreign Revolver from $30,000 to $20,000, and (iii) amends and restates the covenant in the 2005 Senior Credit Facility addressing maintenance of a minimum Consolidated Fixed Charge Coverage Ratio (as defined in the 2005 Senior Credit Facility) to make the covenant less restrictive. The Company elected to reduce the size of the Foreign Revolver in order to minimize commitment costs for unused credit facilities.

(c) *Industrial Revenue Bonds*—On October 27, 2005, Tempur Production USA, Inc. (Tempur Production), a subsidiary of Tempur-Pedic International Inc., completed an industrial revenue bond financing for the construction and equipping of Tempur Production's new manufacturing facility (the Project) located in Bernalillo County, New Mexico (Bernalillo County). Under the terms of the financing, Bernalillo County will issue up to $75,000 of Series 2005A Taxable Variable Rate Industrial Revenue Bonds (the Series A Bonds). The Series A Bonds will be marketed to third parties by a remarketing agent and secured by a letter of credit issued under the Company's Domestic Revolver and purchased by qualified investors. The Series A Bonds have a final maturity date of September 1, 2030. The interest rate on the Series A Bonds is a weekly rate set by the remarketing agent, in its sole discretion, though the interest rate may not exceed the lesser of (i) the highest rate allowed under New Mexico law or (ii) 12% per annum. On October 27, 2005, Tempur Production made an initial draw of $53,925 on the Series A Bonds. The Company used proceeds from the Bonds to pay down the prior domestic revolving credit facility, among other things.

Bernalillo County will also issue up to $25,000 of Series 2005B Taxable Fixed Rate Industrial Revenue Bonds (the Series B Bonds, and collectively with the Series A Bonds, the Bonds). The Series B Bonds will be sold to Tempur World LLC, will not be secured by the letter of credit described above, and will be held by Tempur World, LLC, representing the Company's equity in the Project. The Series B Bonds have a final maturity date of September 1, 2035. The interest rate on the Series B Bonds is fixed at 7.75%. On October 27, 2005, Tempur Production made an initial draw of $17,975 under the Series B Bonds, which was transferred to and used by Tempur World LLC to purchase Series B Bonds.

On October 27, 2005, Tempur Production transferred its interest in the Project to Bernalillo County, and Bernalillo County leased the Project back to Tempur Production on a long-term basis with the right to purchase the Project for one dollar when the Bonds are retired. Pursuant to the lease agreement, Tempur Production will pay rent to Bernalillo County in an amount sufficient to pay debt service on the Bonds and certain fees and expenses. The Bonds are not general obligations of Bernalillo County, but are special, limited obligations payable solely from bond proceeds, rent paid by Tempur Production under the lease agreement, and other revenues. The substance of the transaction is that Bernalillo County issued the Bonds on behalf of Tempur Production. Therefore, the Company has recorded the obligation as long-term debt of $53,925 in its consolidated balance sheet on the date of the transaction.

(d) *Senior Subordinated Notes*—In 2003, Tempur-Pedic, Inc. and Tempur Production (Issuers) issued $150,000 aggregate principal amount of 10.25% Senior Subordinated Notes due 2010 (Senior Subordinated Notes). The Senior Subordinated Notes are unsecured senior subordinated indebtedness of the Issuers and are fully and unconditionally, and jointly and severally, guaranteed on an unsecured senior subordinated basis by the

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Issuers' ultimate parent, Tempur-Pedic International Inc., and certain other subsidiaries of Tempur-Pedic International Inc. Except as noted below, the Senior Subordinated Notes have no mandatory redemption or sinking fund requirements. However, the indenture governing the Senior Subordinated Notes permits the partial redemption at the Issuer's option under certain circumstances prior to August 15, 2006, and full redemption at the Issuer's option prior to August 15, 2007 at a redemption price of 100% of the principal amount plus a "make whole" premium based on the discounted value of the redemption price payable at August 15, 2007 plus remaining interest payments to such date or after August 15, 2007 at a redemption price of 105.125% of the principal amount.

If Tempur-Pedic, Inc., Tempur Production USA, Inc., Tempur-Pedic International Inc. or any of Tempur-Pedic International Inc.'s other restricted subsidiaries sell certain assets or experience specific kinds of changes of control, Tempur-Pedic, Inc. and Tempur Production USA, Inc. must offer to repurchase the Senior Subordinated Notes at the prices, plus accrued and unpaid interest, and additional interest, if any, to the date of redemption specified in the indenture.

On January 23, 2004, the Issuers redeemed an aggregate principal amount of $52,500 of outstanding Senior Subordinated Notes. The redemption price was 110.25% of the principal amount plus accrued interest, and the redemption was funded with a portion of the net proceeds from the initial public offering of Tempur-Pedic International Inc. The Company reflected the $5,381 redemption premium as a Loss on extinguishment of debt included in Other income (expense), net in the year ended December 31, 2004.

The Senior Subordinated Notes contain certain nonfinancial and financial covenants which include restrictions on: the declaration or payment of dividends and distributions; the payment, purchase, redemption, defeasance, acquisition or retirement of subordinated indebtedness; the granting of liens; the making of loans and the transfer of properties and assets; mergers; consolidations or sale of assets; the acquisition or creation of additional subsidiaries; and the sale and leaseback of assets. The Company was in compliance with all covenants as of December 31, 2005.

(5) Stockholders' Equity

(a) *Registration Rights*—Under the terms of a registration rights agreement entered into in 2002 in connection with the Tempur Acquisition, holders of 10% of Tempur-Pedic International Inc.'s registrable securities, as defined in the Registration Rights Agreement, have the right, subject to certain conditions, to require Tempur-Pedic International Inc. to register any or all of their shares of common stock under the Securities Act of 1933, as amended (Securities Act), at the Company's expense. The 15,313 shares of common stock sold in the initial public offering by selling shareholders and the 14,950 shares sold in the 2004 secondary offering were sold by selling stockholders that were parties to the Registration Rights Agreement. As of December 31, 2005, the Company estimates that 9,647 outstanding shares of registrable common stock are held by parties to the Registration Rights Agreement.

Certain of these holders have demand registration rights under the Registration Rights Agreement as described above.

(b) *Stock Split*—On December 23, 2003, the Board of Directors declared a 525-for-one stock split, in the form of a stock dividend.

(c) *Initial Public Offering*—Effective with Tempur-Pedic International Inc.'s initial public offering on December 23, 2003, the authorized shares of capital stock were increased to 300,000 shares of common stock and 10,000 shares of preferred stock. Subject to preferences that may be applicable to any outstanding preferred stock, holders of the common stock are entitled to receive ratably such dividends as may be declared from time to time by the Board of Directors out of funds legally available for that purpose. In the event of liquidation,

dissolution, or winding up, the holders of the common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding.

Tempur-Pedic International Inc. is authorized to issue up to 10,000 shares of preferred stock, $0.01 par value per share. The Board of Directors is authorized, subject to any limitations prescribed by law, without further vote or action by the stockholders, to issue from time to time shares of preferred stock in one or more series. Each such series of preferred stock will have such number of shares, designations, preferences, voting powers, qualifications, and special or relative rights or privileges as determined by the Board of Directors, which may include, among others, dividend rights, voting rights, redemption and sinking fund provisions, liquidation preferences, conversion rights and preemptive rights.

(d) *Secondary Public Offering*—On November 23, 2004, Tempur-Pedic International Inc. closed a secondary offering of 14,950 shares of its common stock, including the subsequent exercise in full of the underwriters' overallotment option, at a price of $18.96 per share. All shares were sold by certain of the stockholders pursuant to the terms of the Registration Rights Agreement. The Company incurred $939 in expenses associated with this offering.

(e) *Share Repurchase Program*—On October 18, 2005, the Board of Directors authorized the repurchase of up to $80,000 of the Company's common stock. Share repurchases under this program were made through open market transactions, negotiated purchases or otherwise, at times and in such amounts as management deemed appropriate. During 2005, the Company repurchased 6,840 shares, at a total cost of $76,000. The Company funded these share repurchases from borrowings under the 2005 Senior Credit Facility and funds from operations.

On January 25, 2006, the Board of Directors amended the share repurchase program described above to increase the total authorization by an additional $100,000 resulting in a total authorization to purchase up to $180,000 of Tempur-Pedic International Inc.'s common stock. Accordingly, as of January 25, 2006, because we had already purchased $76,000 of shares under the program, the Company was authorized to purchase up to $104,000 of our common stock. Since January 25, 2006, the Company has repurchased an additional 3,652 shares at a total cost of $42,761 through February 24, 2006. The share repurchases have been and will continue to be funded from borrowings under the 2005 Senior Credit Facility and funds from operations.

(6) Stock-based Compensation

(a) *2002 Option Plan*—On November 1, 2002, Tempur-Pedic International Inc. adopted the 2002 Option Plan to provide for grants of options to purchase shares of Class B-1 common stock to employees and directors of the Company. Options granted under the 2002 Option Plan which qualify as incentive stock options, as defined by the Code, must have an exercise price of not less than the fair market value of Tempur-Pedic International Inc.'s Class B-1 common stock at the date of grant. The determination of the exercise price was made by the Board of Directors. Options granted under the 2002 Option Plan provided for vesting terms as determined by the Board of Directors at the time of grant. Options can be exercised up to ten years from the grant date and up to five years from the date of grant for any stockholders who own 10% or more of the total combined voting power of all shares of stock of Tempur-Pedic International Inc. The total number of shares of common stock subject to issuance under the 2002 Option Plan did not exceed 6,534 shares, which was subject to certain adjustment provisions. The Company currently anticipates there will be no additional options issued under this plan.

(b) *Tempur-Pedic International 2003 Equity Incentive Plan*—The 2003 Equity Incentive Plan (the 2003 Plan) is administered by the Compensation Committee of the Board of Directors, which has the exclusive

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authority, including the power to determine eligibility to receive awards, the types and number of shares of stock subject to the awards, the price and timing of awards and the acceleration or waiver of any vesting, and performance of forfeiture restriction. The Compensation Committee, however, does not have the authority to waive any performance restrictions for performance-based awards.

Any of the Company's employees, non-employee directors, consultants and Company advisors, as determined by the Compensation Committee, may be selected to participate in the 2003 Plan. The 2003 Plan provides for awards of stock options, stock appreciation rights, restricted stock and stock unit awards, performance shares, stock grants and performance based awards.

During December 2004, the Company granted 70 restricted stock units (RSUs) to an employee. The RSUs vest ratably in six equal installments through January 1, 2008 and are exercisable at no cost. The Company recognized deferred stock compensation of $1,351 which is reflected as a component of Stockholders' Equity at December 31, 2004.

(c) *Tempur-Pedic International 2003 Employee Stock Purchase Plan*—The 2003 Employee Stock Purchase Plan (ESPP) permits eligible employees to purchase up to certain limits as defined in the 2003 Employee Stock Purchase Plan of the Company's common stock annually over the course of two semi-annual offering periods at a price of no less than 85% of the price per share of Tempur-Pedic International Inc.'s common stock either at the beginning or the end of each six-month offering period, whichever is less. The Compensation Committee of the Board of Directors administers the ESPP. The Board of Directors may amend or terminate the ESPP. The ESPP complies with the requirements of Section 423 of the Internal Revenue Code. The Company may issue a maximum of 500 shares of its common stock under the ESPP.

The following table summarizes information about stock options outstanding as of December 31, 2005, 2004 and 2003:

	Shares	Weighted Average Exercise Price
Options outstanding at December 31, 2002	6,101	$ 1.53
Granted	2,734	2.39
Exercised	(1,902)	1.62
Terminated	(450)	1.54
Options outstanding at December 31, 2003	6,483	1.87
Granted	570	15.78
Exercised	(848)	1.79
Terminated	(115)	1.66
Options outstanding at December 31, 2004	6,090	3.18
Granted	1,045	13.12
Exercised	(1,059)	1.97
Terminated	(97)	1.69
Options outstanding at December 31, 2005	5,979	$ 5.17

Options outstanding at December 31, 2005 had exercise prices ranging from $1.53 – $24.40 per share. Options granted prior to the Company's initial public offering from the Company's 2002 Option Plan had exercise prices ranging from $1.53 to $2.86 per share and are exercisable ratably through September 30, 2013. All other

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options granted under the 2003 Equity Incentive Plan had exercise prices ranging from $10.41 to $24.40 per share and are exercisable ratably through December 27, 2015. The weighted average fair value at date of grant for options granted during 2005 was $13.12. The weighted average remaining contractual life is 7.7 years.

The number of options exercisable were 31, 1,175 and 2,702 as of December 31, 2005, 2004 and 2003, respectively. The weighted average exercise prices of options exercisable were $2.46, $2.14 and $5.59 as of December 31, 2005, 2004 and 2003, respectively.

(d) *Stock Based Compensation*—Pro forma information regarding net income and earnings per share is required by SFAS 123, which also requires that the information be determined as if the Company has accounted for its stock options granted subsequent to December 31, 2002 under the fair value method of SFAS 123. The fair value for these options was estimated at the date of grant using a Black-Scholes option pricing model with the following weighted average assumptions:

	2005	2004
Expected life of option, in years	5	5
Risk-free interest rate	3%	3%
Expected volatility of stock	46%	36%
Expected dividend yield on stock	0%	0%

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of subjective assumptions, including the expected stock price volatility. The Company's options have had characteristics significantly different from those of similar traded options, and changes in the subjective input can materially affect the fair value estimate.

In December 2004, the FASB issued SFAS 123R, which requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements based on their fair values. See further discussion in Note 2.

(7) Accumulated Other Comprehensive Income

The components of Accumulated other comprehensive income are as follows:

	December 31,	
	2005	2004
Financial instruments accounted for as hedges	**(478)**	(508)
Foreign currency translation	**1,615**	17,715
Accumulated other comprehensive income	**$1,137**	$17,207

(8) Commitments and Contingencies

(a) *Lease Commitments*—Tempur-Pedic International leases space for its corporate headquarters and a retail outlet under operating leases that call for annual rental payments due in equal monthly installments. Operating lease expenses were $3,578, $4,226 and $3,944 for the years ended December 31, 2005, 2004 and 2003 respectively.

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Future minimum lease payments at December 31, 2005 under these non-cancelable leases are as follows:

Year Ended December 31,	
2006	$ 3,132
2007	2,652
2008	1,869
2009	1,715
2010	1,021
Thereafter	676
	$11,065

(b) *Purchase Commitments*—As of December 31, 2005, the Company had outstanding commitments of approximately $9,160 for capital expenditures related to the construction of the production facility in Albuquerque, New Mexico. The Company will, from time to time, enter into limited purchase commitments for the purchase of certain raw materials. Amounts committed under these programs are not significant as of December 31, 2005.

(c) *Securities Litigation*—Between October 7, 2005 and November 21, 2005, five complaints were filed against Tempur-Pedic International Inc. and certain of its directors and officers in the United States District Court for the Eastern District of Kentucky (Lexington Division) purportedly on behalf of a class of shareholders who purchased Tempur-Pedic International Inc.'s stock between April 22, 2005 and September 19, 2005. On December 29, 2005, the court consolidated these five actions (the "Securities Law Action"). Lead plaintiffs filed a consolidated complaint on February 27, 2006. In their consolidated complaint, lead plaintiffs assert claims arising under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. Lead plaintiffs allege that certain of Tempur-Pedic International Inc.'s public disclosures regarding its financial performance between April 22, 2005 and September 19, 2005 were false and/or misleading. The principal allegation set forth in the Securities Law Action is that Tempur-Pedic International Inc. did not disclose the impact of competition on its prospects. The plaintiffs seek compensatory damages, costs, fees and other relief within the Court's discretion. We strongly believe that the Securities Law Action lacks merit, and we intend to defend against the claims vigorously. However, due to the inherent uncertainties of litigation, we cannot predict the outcome of the Securities Law Action at this time, and we can give no assurance that these claims will not have a material adverse affect on our financial position or results of operations.

On November 10, 2005 and December 15, 2005, complaints were filed in the state courts of Delaware and Kentucky, respectively, against certain officers and directors of Tempur-Pedic International Inc., purportedly derivatively on behalf of Tempur-Pedic International Inc. (the "*Derivative Complaints*"). The Derivative Complaints assert that the named officers and directors breached their fiduciary duties when they allegedly sold Tempur-Pedic International Inc.'s securities on the basis of material non-public information in 2005. The Delaware derivative complaint also asserts a claim for breach of fiduciary duty with respect to the disclosures that also are the subject of the Securities Law Action described above. On December 14, 2005 and January 26, 2006, respectively, the Delaware court and Kentucky court stayed these derivative actions pending the outcome of the motion to dismiss that defendants intend to file in the Securities Law Action. Tempur-Pedic International Inc. is also named as a nominal defendant in the Derivative Complaints, although the actions are derivative in nature and purportedly asserted on behalf of Tempur-Pedic International Inc. Tempur-Pedic International Inc. is in the process of evaluating these claims.

The Company is also party to various other legal proceedings generally incidental to its business. Although the ultimate disposition of these proceedings is not presently determinable, management does not believe that adverse determinations in any or all of such proceedings will have a materially adverse effect upon the financial condition, liquidity or results of operations of the Company.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

(9) Derivative Financial Instruments

The Company's earnings, as a result of its global operating and financing activities, are exposed to changes in foreign currency exchange rates, which may adversely affect its results of operations and financial position. We protect a portion of our currency exchange exposure with foreign currency forward contracts. A sensitivity analysis indicates the potential loss in fair value on foreign currency forward contracts outstanding at December 31, 2005, resulting from a hypothetical 10% adverse change in all foreign currency exchange rates against the U.S. Dollar, is approximately $823. Such losses would be largely offset by gains from the revaluation or settlement of the underlying assets and liabilities that are being protected by the foreign currency forward contracts.

The Company does not apply hedge accounting to the foreign currency forward contracts used to offset currency-related changes in the fair value of foreign currency denominated assets and liabilities. These contracts are marked-to-market through earnings at the same time that the exposed assets and liabilities are remeasured through earnings. The contracts had notional values of $20,614 and $19,240 and fair values of $7 and $453 included in Other current assets and liabilities in the Consolidated Balance Sheets as of December 31, 2005 and 2004, respectively. Tempur-Pedic International also had foreign exchange (losses) gains on derivative financial instruments of $(3,439), $606, and $(3,051) for the years ended December 31, 2005, 2004, and 2003, respectively.

The Company is exposed to changes in interest rates. The 2005 Senior Credit Facility and the Series A bonds issued in connection with our New Mexico facility are variable-rate debt. Interest rate changes generally do not affect the market value of such debt but do impact the amount of the Company's interest payments and therefore, future earnings and cash flows, assuming other factors are held constant. On December 31, 2005, the Company had variable-rate debt of approximately $245,490. Holding other variables constant, including levels of indebtedness, a one hundred basis point increase in interest rates on the variable-rate debt would cause an estimated reduction in income before income taxes for the next year of approximately $2,455.

In January 2003, the Company paid premiums to purchase two three-year interest rate caps for the purpose of protecting cash flows associated with interest payments on $60,000 of the existing variable-rate debt outstanding, at any given time, against LIBOR rates rising above 5%. Under the terms of the interest rate caps, the Company paid premiums to receive payments based on the difference between 3-month LIBOR and 5% during any period in which the 3-month LIBOR rate exceeds 5%. The fair value of the interest rate caps was included in Prepaid expenses and other current and the gains (losses) in fair value were charged to Accumulated other comprehensive income. The fair value and gains (losses) recognized on the interest rate caps are immaterial in all periods for which financial statements are presented. The interest rate caps will expire on March 31, 2006 and the Company has not yet determined if it will replace the interest rate caps upon expiration.

(10) Income Taxes

(a) American Jobs Creation Act of 2004—Repatriation of Foreign Earnings—On October 22, 2004, the President signed the Jobs Creation Act, which provides a temporary elective 85% dividends received deduction for cash dividends paid by foreign subsidiaries to their U.S. corporate shareholder in either 2004 or 2005. During the third quarter of 2005, the Company completed its analysis of the Jobs Creation Act. Under the provisions of the Jobs Creation Act, the Company's Chief Executive Officer and Board of Directors approved two domestic reinvestment plans to repatriate $115,000 and $40,650, respectively, in foreign earnings in the fourth quarter of 2005. On October 19, 2005, the Company repatriated a planned dividend of $115,000. The Company repatriated an additional $40,650 on December 19, 2005, for a total repatriation of $155,650. Proceeds from the repatriation were reinvested in the Company's U.S. operations consistent with the objectives of the Jobs Creation Act.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

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(In thousands, except per share amounts)

The Company recognized tax expense of $6,571 in the year ended December 31, 2005, or $0.07 per fully diluted share, related to the Jobs Creation Act. This tax expense consists of federal taxes of $10,619, state taxes, net of federal benefits, of $309, and a net tax benefit of $4,357 related to the utilization of foreign tax credits, and reflects the impact of previously taxed Subpart F and Section 956 income and resulting foreign exchange gain on actual distribution.

(b) *Provision for Income Taxes*—The Company's effective income tax provision differs from the amount calculated using the statutory U.S. federal income tax rate, principally due to the following:

	Year Ended December 31,					
	2005		2004		2003	
	Amount	Percentage of Income Before Taxes	Amount	Percentage of Income Before Taxes	Amount	Percentage of Income Before Taxes
Statutory U.S. federal income tax	**$58,265**	**35.0%**	$42,765	35.0%	21,424	35.0%
State income taxes, net of federal benefit	**2,029**	**1.2**	2,660	2.2	748	1.2
Foreign tax differential	**(4,033)**	**(2.4)**	(2,669)	(2.2)	(1,746)	(2.8)
Change in valuation allowance	**1,153**	**0.7**	1,522	1.2	2,654	4.3
Foreign repatriation, net of foreign tax credits	**6,263**	**3.8**	—	—	—	—
Foreign tax credit, net of Section 78 gross up	**—**	**—**	(39)	—	(1,163)	(1.9)
Incentive Stock Options	**(847)**	**(0.5)**	1,073	0.9	797	1.3
Subpart F income and Section 956	**2,644**	**1.6**	1,524	1.2	1,688	2.8
Manufacturing deduction	**(1,030)**	**(0.6)**	—	—	—	—
Permanent and other	**2,699**	**1.5**	344	0.3	(775)	(1.3)
Effective income tax provision	**$67,143**	**40.3%**	$47,180	38.6%	23,627	38.6%

Subpart F income represents interest and royalties earned by a foreign subsidiary. Under the Internal Revenue Code, such income is taxable to Tempur-Pedic International as if, in effect, earned directly by Tempur-Pedic International.

The Company's effective tax rate for the year ended December 31, 2005 was 40.3%, including the $6,571 tax expense related to the repatriation under the provisions of the Jobs Creation Act and including a benefit of $1,588 related to a favorable state tax ruling. Excluding the impact of the transactions and adjustments described above, the Company's effective tax rates would have been 37.3% for the year ended December 31, 2005. The effective tax rate was 38.6% for the years ended December 31, 2004 and 2003.

At December 31, 2005, Tempur-Pedic International had remaining undistributed earnings of $7,870 from its foreign subsidiaries determined under U.S. tax principles as of November 1, 2002 related to the period prior to the acquisition of Tempur World Inc. by Tempur-Pedic International Inc, translated into U.S. dollars at the applicable exchange rate on December 31, 2005. All pre-acquisition earnings of $60,810 related to Dan Foam ApS were distributed as part of the $155,650 repatriation plans under the Jobs Creation Act. The remaining balance of $7,870 relates to other foreign subsidiaries. No provisions have been made for U.S. income taxes or foreign withholding taxes on the remaining $7,870 of undistributed earnings, as these earnings are considered indefinitely reinvested.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

In addition, Tempur-Pedic International had remaining undistributed earnings from its foreign subsidiaries determined under U.S. generally accepted accounting principles for the period from November 1, 2002 through December 31, 2005 of $71,453. As part of the $155,650 repatriation plans under the Jobs Creation Act, $94,840 of post November 1, 2002 earnings of Dan Foam ApS, translated at the December 31, 2005 exchange rate, were distributed. No provisions have been made for U.S. income taxes or foreign withholding taxes on the remaining $71,453 of undistributed earnings, as these earnings are considered indefinitely reinvested. These undistributed earnings could become subject to U.S. income taxes and foreign withholding taxes (subject to a reduction for foreign tax credits) if these undistributed earnings were remitted as dividends, loaned to the U.S. parent company or a U.S. subsidiary, or if Tempur-Pedic International Inc. should sell its stock in the subsidiaries.

The Company has established a valuation allowance for net operating loss carryforwards (NOLs) and certain other deferred tax assets related to certain domestic and foreign operations. The Company's foreign NOLs were $24,382 and $24,864 as of December 31, 2005 and 2004, respectively. These NOLs expire at various dates through 2015. The Company's domestic NOLs were $1,068 net of federal benefit as of December 31, 2005. These domestic NOLs relate to NOLs generated in various states where domestic subsidiaries are filing separate company income tax returns and will expire at various dates through 2024. Management believes that, based on a number of factors, the available objective evidence creates sufficient uncertainty regarding the realizability of the Foreign NOLs and certain other timing differences related to some of its foreign operations. The Company believes that it is more likely than not that its tax assets (other than those related to some of its foreign operations as discussed above) are realizable based on the level of future reversing taxable temporary differences and on historically profitable operations, which the Company believes are more likely than not to continue into the future to the extent necessary to assure realization of recorded deferred tax assets. However, there can be no assurance that such assets will be realized if circumstances change.

The Income tax provision includes federal and state income taxes currently payable and those deferred or prepaid because of temporary differences between financial statement and tax bases of assets and liabilities. The Company records income taxes under the liability method. Under this method, deferred income taxes are recognized for the estimated future tax effects of differences between the tax bases of assets and liabilities and their financial reporting amounts based on enacted tax laws.

The Income tax provision consisted of the following:

	Year Ended December 31,		
	2005	**2004**	**2003**
Current			
Federal	**$29,045**	$18,064	$ 5,813
State	**4,003**	3,601	1,403
Foreign	**29,438**	20,830	19,754
Total current	**62,486**	42,495	26,970
Deferred			
Federal	**3,922**	3,891	(1,009)
State	**208**	451	(191)
Foreign	**527**	343	(2,143)
Total deferred	**4,657**	4,685	(3,343)
Total Income tax provision	**$67,143**	$47,180	$23,627

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
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The net deferred tax asset and liability recognized in the Consolidated Balance Sheets consisted of the following:

	December 31, 2005	December 31, 2004
Deferred tax assets:		
Inventories	**$ 4,908**	$ 5,042
Net operating losses	**9,711**	11,880
Property, plant and equipment	**2,043**	2,455
Accrued expenses and other	**6,411**	7,158
Total deferred tax assets	**23,073**	26,535
Valuation allowances	**(10,723)**	(14,087)
Total net deferred tax assets	**$ 12,350**	$ 12,448
Deferred tax liabilities:		
Property, plant and equipment	**$ (13,142)**	$ (14,995)
Intangible assets	**(28,990)**	(30,616)
Accrued expenses and other	**(3,966)**	(1,749)
Inventories	**(131)**	(75)
Goodwill	**25**	69
Total deferred tax liabilities	**(46,204)**	(47,366)
Net deferred tax liability	**$ (33,854)**	$ (34,918)

(11) Major Customers

Five customers accounted for approximately 12%, 13% and 22% of Tempur-Pedic International sales for the years ended December 31, 2005, 2004 and 2003, respectively. The top five customers also accounted for approximately 19% and 15% of accounts receivable as of December 31, 2005 and 2004, respectively. The loss of one or more of these customers could negatively impact the Company. The composition of our top 5 customers varies between the periods ended December 31, 2005, 2004 and 2003.

(12) Benefit Plan

A subsidiary of the Company has a defined contribution plan (the Plan) whereby eligible employees may contribute up to 15% of their pay subject to certain limitations as defined by the Plan. Employees are eligible to receive matching contributions at the start of employment with the Company. The Plan provides a 100% match of the first 3% and 50% of the next 2% of eligible employee contributions. All matching contributions vest immediately. The Company incurred $520, $227, and $148 of expenses associated with the Plan for the years ended December 31, 2005, 2004 and 2003, respectively.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

(13) Earnings Per Share

	Year Ended December 31, 2005	Year Ended December 31, 2004	Year Ended December 31, 2003
Numerator:			
Net income	**$ 99,329**	$ 75,007	$ 37,575
Denominator:			
Denominator for basic earnings per share—weighted average shares	**98,012**	97,695	11,330
Effect of dilutive securities:			
Employee stock options and RSUs	**4,132**	5,181	5,547
Warrants	**—**	—	4,299
Convertible preferred stock	**—**	—	74,155
Dilutive potential common shares	**4,132**	5,181	84,001
Denominator for diluted earnings per share—adjusted weighted average shares	**102,144**	102,876	95,331
Basic earnings per share	**$ 1.01**	$ 0.77	$ 3.32
Diluted earnings per share	**$ 0.97**	$ 0.73	$ 0.39

The Company excluded 395 and 29 shares issuable upon exercise of outstanding stock options for the years ended December 31, 2005 and 2004, respectively, from the Diluted earnings per share computation since their exercise price was greater than the average market price of our common stock or if they were otherwise anti-dilutive.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

(14) Business Segment Information

The Company operates in two business segments: Domestic and International. These reportable segments are strategic business units that are managed separately based on the fundamental differences in their operations. The Domestic segment consists of the U.S. manufacturing facility, whose customers include the U.S. distribution subsidiary and certain North American third party distributors. The International segment consists of the manufacturing facility in Denmark, whose customers include all of the distribution subsidiaries and third party distributors outside the Domestic segment. The Company evaluates segment performance based on Net sales and Operating income.

The following table summarizes segment information:

	Year Ended December 31,		
	2005	2004	2003
Net sales from external customers:			
Corporate	$ —	$ —	$ —
Domestic	536,286	430,718	282,248
International	300,446	254,148	196,887
	$ 836,732	$ 684,866	$ 479,135
Inter-segment sales:			
Corporate	$ —	$ —	$ —
Domestic	—	—	—
International	39,164	(19,979)	(48,774)
Intercompany eliminations	(39,164)	19,979	48,774
	$ —	$ —	$ —
Operating income (loss):			
Corporate	$ (15,124)	$ (19,304)	$ (12,611)
Domestic	115,077	108,641	51,966
International	90,901	61,698	57,719
	$ 190,854	$ 151,035	$ 97,074
Depreciation and amortization (excluding stock-based compensation amortization):			
Corporate	$ 451	$ 740	$ 10,260
Domestic	11,926	9,952	7,716
International	12,622	12,620	8,266
	$ 24,999	$ 23,312	$ 26,242
Total assets:			
Corporate	$ 372,341	$ 393,202	332,018
Domestic	493,871	439,845	477,406
International	301,465	345,040	346,156
Intercompany eliminations	(465,366)	(538,464)	(535,231)
	$ 702,311	$ 639,623	620,349
Capital expenditures:			
Corporate	$ 310	$ 535	$ 430
Domestic	78,282	20,051	23,372
International	6,289	17,833	8,795
	$ 84,881	$ 38,419	$ 32,597

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

The following table sets forth Net sales by significant product group:

	Year Ended December 31,		
	2005	2004	2003
Mattresses	**$ 566,460**	$ 433,285	$ 268,188
Pillows	**126,227**	138,044	132,750
All Other	**144,045**	113,537	78,197
	$ 836,732	$ 684,866	$ 479,135

During the course of normal operations, the Domestic segment purchases inventory from the Danish manufacturing facility. These purchases are included in the International segment as Intercompany sales. The Intercompany profits on these sales are eliminated from the International segment when the manufacturing profit in ending finished goods inventory is eliminated during the consolidation of the Company's results. These manufacturing profits were $15,832, $4,716, and $12,916 for the years ended December 31, 2005, 2004, and 2003.

(15) Consolidating Financial Information

On August 15, 2003, the Issuers issued $150,000 aggregate principal amount of Senior Subordinated Notes. The Senior Subordinated Notes are unsecured senior subordinated indebtedness of the Issuers and are fully and unconditionally, and jointly and severally, guaranteed on an unsecured senior subordinated basis by the Issuers' ultimate parent, Tempur-Pedic International, and two intermediate parent corporations (referred to as the Combined Guarantor Parents) and all of Tempur-Pedic International's current and future domestic subsidiaries (referred to collectively as the Combined Guarantor Subsidiaries), other than the Issuers. The Issuers and subsidiary guarantors are indirectly 100% owned subsidiaries of the Combined Guarantor Parents and the subsidiary guarantors are 100% owned subsidiaries of the Issuers. The foreign subsidiaries (referred to as Combined Non-Guarantor Subsidiaries) represent the foreign operations of the Company and will not guarantee this debt. The following financial information presents Condensed Consolidating Balance Sheets, Statements of Income, and Statements of Cash Flows for the Combined Guarantor Parents, Issuers and their Subsidiary Guarantors and Combined Non-Guarantor Subsidiaries. During 2004, one of the Issuers established a new legal entity (Tempur-Pedic Retail, Inc.). Accordingly, Tempur-Pedic Retail, Inc. has been reflected as a Combined Guarantor Subsidiary.

Condensed Consolidating Balance Sheet
As of December 31, 2005

	Ultimate Parent	Combined Issuer subsidiaries	Combined Guarantor Parents	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated
Current assets	$ 647	$ 76,888	$ 19,917	$ 56,428	$ 107,156	$ (32,768)	$ 228,268
Property, plant and equipment, net	—	130,608	472	5,543	56,601	—	193,224
Other noncurrent assets	132,997	286,374	218,308	1,967	137,707	(496,534)	280,819
Total assets	$133,644	$ 493,870	$238,697	$ 63,938	$ 301,464	$ (529,302)	$ 702,311
Current liabilities	$ 15,866	$ (25,446)	$ 19,297	$ 80,072	$ 63,957	$ (32,767)	$ 120,979
Noncurrent liabilities	—	482,170	89,327	50	236,060	(452,604)	355,003
Equity (deficit)	117,778	37,146	130,073	(16,184)	1,447	(43,931)	226,329
Total liabilities and equity (deficit)	$133,644	$ 493,870	$238,697	$ 63,938	$ 301,464	$ (529,302)	$ 702,311

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

Condensed Consolidating Balance Sheet
As of December 31, 2004

	Ultimate Parent	Combined Issuer subsidiaries	Combined Guarantor Parents	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated
Current assets	$ 3,470	$ 84,322	$ 13,569	$ 48,112	$ 133,162	$ (68,789)	$ 213,846
Property, plant and equipment, net	—	63,538	613	4,235	70,071	—	138,457
Other noncurrent assets	108,538	291,986	267,011	891	141,808	(522,914)	287,320
Total assets	$ 112,008	$ 439,846	$ 281,193	$ 53,238	$ 345,041	$ (591,703)	$ 639,623
Current liabilities	$ 1,046	$ (24,047)	$ 50,767	$ 84,670	$ 55,482	$ (68,789)	$ 99,129
Noncurrent liabilities	—	505,015	198,182	96	180,196	(556,616)	326,873
Equity (deficit)	110,962	(41,122)	32,244	(31,528)	109,363	33,702	213,621
Total liabilities and equity (deficit)	$ 112,008	$ 439,846	$ 281,193	$ 53,238	$ 345,041	$ (591,703)	$ 639,623

Condensed Consolidating Statement of Income
For the Year Ended December 31, 2005

	Ultimate Parent	Combined Issuer subsidiaries	Combined Guarantor Parents	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated
Net sales	$ —	$ 10,600	$ —	$ 525,686	$ 339,610	$ (39,164)	$ 836,732
Cost of sales	—	5,240	(1,171)	291,489	156,396	(39,164)	412,790
Gross profit	—	5,360	1,171	234,197	183,214	—	423,942
Operating expenses	4,890	18,453	11,405	110,274	88,066	—	233,088
Operating income (loss)	(4,890)	(13,093)	(10,234)	123,923	95,148	—	190,854
Interest income (expense), net	(7)	(15,799)	(3,548)	26	(936)	—	(20,264)
Loss on extinguishment of debt	—	(1,960)	(1,568)	—	(717)	—	(4,245)
Other income (expense)	19	101,189	400	(101,666)	185	—	127
Income taxes	—	27,889	4,941	4,348	29,965	—	67,143
Net income (loss)	$(4,878)	$ 42,448	$(19,891)	$ 17,935	$ 63,715	$ —	$ 99,329

Condensed Consolidating Statement of Income
For the Year Ended December 31, 2004

	Ultimate Parent	Combined Issuer subsidiaries	Combined Guarantor Parents	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated
Net sales	$ —	$ 8,043	$ —	$ 422,675	$ 274,127	$ (19,979)	$ 684,866
Cost of sales	—	4,010	(928)	215,979	124,770	(19,979)	323,852
Gross profit	—	4,033	928	206,696	149,357	—	361,014
Operating expenses	7,604	16,798	12,628	90,006	82,943	—	209,979
Operating income (loss)	(7,604)	(12,765)	(11,700)	116,690	66,414	—	151,035
Interest income (expense), net	—	(17,433)	(2,743)	20	(3,394)	—	(23,550)
Loss on extinguishment of debt	—	(5,381)	—	—	—	—	(5,381)
Other income (expense)	—	59,708	(235)	(59,289)	(101)	—	83
Income taxes	—	25,398	(5,093)	5,702	21,173	—	47,180
Net income (loss)	$(7,604)	$ (1,269)	$ (9,585)	$ 51,719	$ 41,746	$ —	$ 75,007

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

Condensed Consolidating Statement of Income
For the Year Ended December 31, 2003

	Ultimate Parent	Combined Issuer subsidiaries	Combined Guarantor Parents	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated
Net sales	$ —	$ 197,085	$ —	$ 85,163	$ 245,661	$ (48,774)	$ 479,135
Cost of sales	—	110,083	(601)	37,666	125,491	(48,774)	223,865
Gross profit	—	87,002	601	47,497	120,170	—	255,270
Operating expenses	4,626	40,858	8,586	41,674	62,452	—	158,196
Operating income (loss)	(4,626)	46,144	(7,985)	5,823	57,718	—	97,074
Interest income (expense), net	—	(10,876)	(6,212)	(45)	(3,406)	—	(20,539)
Loss on extinguishment of debt	—	(6,651)	(544)	—	(6,474)	—	(13,669)
Other income (expense)	(2)	19,741	(509)	(19,833)	(1,061)	—	(1,664)
Income taxes	(5)	11,640	(5,657)	—	17,649	—	23,627
Net income (loss)	$(4,623)	$ 36,718	$ (9,593)	$ (14,055)	$ 29,128	$ —	$ 37,575

Condensed Consolidating Statement of Cash Flows
For the Year Ended December 31, 2005

	Ultimate Parent	Combined Issuer subsidiaries	Combined Guarantor Parents	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated
Net income (loss)	$ (4,878)	$ 42,448	$ (19,891)	$ 17,935	$ 63,715	$ —	$ 99,329
Non-cash expenses	2,864	16,275	5,721	1,118	16,938	230	43,146
Changes in working capital	17,140	2,915	(42,779)	(16,617)	(655)	(230)	(40,226)
Net cash (used in) / provided by operating activities	15,126	61,638	(56,949)	2,436	79,998	—	102,249
Net cash used for investing activities	(21,171)	(63,845)	163,355	(2,655)	(162,268)	—	(86,584)
Net cash provided by / (used in) financing activities	5,526	3,700	(106,511)	—	77,330	—	(19,955)
Effect on exchange rate changes on cash	—	—	—	—	(6,223)	—	(6,223)
Net increase (decrease) in cash and cash equivalents	(519)	1,493	(105)	(219)	(11,163)	—	(10,513)
Cash and cash equivalents at beginning of the period	970	551	607	219	26,021	—	28,368
Cash and cash equivalents at end of period	$ 451	$ 2,044	$ 502	$ —	$ 14,858	$ —	$ 17,855

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

Condensed Consolidating Statement of Cash Flows
For the Year Ended December 31, 2004

	Ultimate Parent	Combined Issuer subsidiaries	Combined Guarantor Parents	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated
Net income (loss)	$(7,604)	$ (1,269)	$ (9,585)	$ 51,719	$ 41,746	$ —	$ 75,007
Non-cash expenses	5,207	15,546	1,851	2,215	16,854	—	41,673
Changes in working capital	(3,236)	(18,611)	9,487	(52,070)	24,716	—	(39,714)
Net cash provided by / (used in) operating activities	(5,633)	(4,334)	1,753	1,864	83,316	—	76,966
Net cash used for investing activities	—	(18,248)	(770)	(1,645)	(17,688)	—	(38,351)
Net cash (used in) / provided by financing activities	1,847	22,202	(1,921)	—	(50,635)	—	(28,507)
Effect on exchange rate changes on cash	—	—	—	—	4,030	—	4,030
Net increase (decrease) in cash and cash equivalents	(3,786)	(380)	(938)	219	19,023	—	14,138
Cash and cash equivalents at beginning of the period	4,756	931	1,545	—	6,998	—	14,230
Cash and cash equivalents at end of period	$ 970	$ 551	$ 607	$ 219	$ 26,021	$ —	$ 28,368

Condensed Consolidating Statement of Cash Flows
For the Year Ended December 31, 2003

	Ultimate Parent	Combined Issuer subsidiaries	Combined Guarantor Parents	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated
Net income (loss)	$ (4,623)	$ 36,718	$ (9,593)	$ (14,055)	$ 29,128	$ —	$ 37,575
Non-cash expenses	6,012	13,120	4,599	217	5,506	—	29,454
Changes in working capital	119,133	(128,474)	7,492	16,054	(34,284)	—	(20,079)
Net cash (used in) / provided by operating activities	120,522	(78,636)	2,498	2,216	350	—	46,950
Net cash used for investing activities	(39,434)	(23,307)	(430)	(2,192)	(5,744)	—	(71,107)
Net cash provided by / (used in) financing activities	(76,332)	102,196	(1,132)	—	1,842	—	26,574
Effect on exchange rate changes on cash	—	—	—	—	(841)	—	(841)
Net increase (decrease) in cash and cash equivalents	4,756	253	936	24	(4,393)	—	1,576
Cash and cash equivalents at beginning of the period	—	678	609	(24)	11,391	—	12,654
Cash and cash equivalents at end of period	$ 4,756	$ 931	$ 1,545	$ —	$ 6,998	$ —	$ 14,230

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(CONTINUED)
(In thousands, except per share amounts)

(16) Quarterly Financial Data (unaudited)

Our quarterly operating results fluctuate as a result of seasonal variations in our business. A significant portion of our growth in Net sales is attributable to growth in sales in our Domestic retail channel, particularly sales to furniture stores, which we believe are subject to seasonality inherent in the bedding industry with sales expected to be generally lower in the second and fourth quarters and higher in the first and third quarters. Accordingly, our Net sales may be affected by this seasonality as our Domestic retail sales channel continues to grow as a percentage of our overall Net sales.

Quarterly results of operations for the years ended December 31, 2005 and 2004 are summarized below:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
2005				
Net sales	**$ 222,379**	**$ 192,615**	**$ 206,095**	**$ 215,643**
Gross profit	**114,243**	**98,535**	**102,518**	**108,646**
Operating income	**49,380**	**44,597**	**42,818**	**54,059**
Net income	**26,750**	**24,850**	**17,368**	**30,361**
Loss on debt extinguishment	**(717)**	**—**	**—**	**(3,528)**
Income tax provision on repatriation dividend	**—**	**—**	**6,491**	**80**
Basic earnings per share	**$ 0.27**	**$ 0.25**	**$ 0.18**	**$ 0.32**
Diluted earnings per share	**$ 0.26**	**$ 0.24**	**$ 0.17**	**$ 0.30**
2004				
Net sales	$ 153,123	$ 151,600	$ 181,737	$ 198,406
Gross profit	81,339	80,813	96,080	102,782
Operating income	30,534	32,989	42,835	44,677
Net income	11,771	16,946	22,411	23,880
Loss on debt extinguishment	(5,381)	—	—	—
Basic earnings per share	$ 0.12	$ 0.17	$ 0.23	$ 0.24
Diluted earnings per share	$ 0.11	$ 0.16	$ 0.22	$ 0.23

The sum of the quarterly earnings per share amounts may not equal the annual amount reported because per share amounts are computed independently for each quarter and for the full year based on respective weighted-average common shares outstanding and other dilutive potential common shares.

TEMPUR-PEDIC INTERNATIONAL INC. AND SUBSIDIARIES
VALUATION AND QUALIFYING ACCOUNTS
FOR THE YEARS ENDED DECEMBER 31, 2003, 2004 AND 2005
SCHEDULE II

Description	Balance at Beginning of Period	Additions Charges to Costs and Expenses	Charged to Other Accounts	Deductions	Balance at End of Period
Allowance for Doubtful Accounts:					
Year Ended December 31, 2003	$ 2,518	$ 2,090	$ —	$ (415)	$ 4,193
Year Ended December 31, 2004	$ 4,193	$ 3,681	$ —	$ (2,366)	$ 5,508
Year Ended December 31, 2005	$ 5,508	$ 2,666	$ —	$ (2,738)	$ 5,436

Exhibit 10.1

Published CUSIP Number: 88023PAA0

CREDIT AGREEMENT

dated as of October 18, 2005

among

TEMPUR-PEDIC, INC.,
TEMPUR PRODUCTION USA, INC.,
DAN-FOAM ApS,
and
CERTAIN SUBSIDIARIES AND AFFILIATES,
as Borrowers,

TEMPUR-PEDIC INTERNATIONAL INC.,
TEMPUR WORLD LLC,
TEMPUR WORLD HOLDINGS, LLC,
and
CERTAIN SUBSIDIARIES AND AFFILIATES OF THE BORROWERS,
as Guarantors,

THE LENDERS PARTY HERETO,

BANK OF AMERICA, N.A.,
as Administrative Agent and Domestic Collateral Agent,

NORDEA BANK DANMARK A/S,
as European Co-Agent and Foreign Collateral Agent,

and

FIFTH THIRD BANK,
as U.S. Co-Agent

BANC OF AMERICA SECURITIES LLC,
as
Sole Lead Arranger and Sole Book Manager

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SCHEDULES

EXHIBITS

CREDIT AGREEMENT

This CREDIT AGREEMENT (the "*Credit Agreement*" or the "*Agreement*") is entered into as of October 18, 2005, among the following:

(i) TEMPUR-PEDIC, INC., a Kentucky corporation ("*TPI*"), and TEMPUR PRODUCTION USA, INC., a Virginia corporation ("*TPUSA*"), as Domestic Borrowers;

(ii) DAN-FOAM ApS, a private limited liability company existing under the laws of Denmark ("*Dan-Foam*"), as Foreign Borrower;

(iii) TEMPUR-PEDIC INTERNATIONAL INC., a Delaware corporation (the "*Parent*"), TEMPUR WORLD LLC, a Delaware limited liability company ("*TW*"), TEMPUR WORLD HOLDINGS, LLC, a Delaware limited liability company ("*TWH*"), and certain subsidiaries and affiliates identified herein, as Guarantors;

(iv) the Lenders and L/C Issuers identified herein;

(v) BANK OF AMERICA, N.A., as Administrative Agent and Domestic Collateral Agent; and

(vi) NORDEA BANK DANMARK A/S, as Foreign Collateral Agent.

WHEREAS, the Borrowers and the Guarantors have requested that the Lenders provide revolving credit and term loan facilities for the purposes set forth herein; and

WHEREAS, the Lenders have agreed to make the requested facilities available on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of these premises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

1.01 ***Defined Terms.***

As used in this Credit Agreement, the following terms have the meanings provided below:

"*Acquisition*" means the purchase or acquisition by any Person of (a) more than 50% of the Capital Stock with ordinary voting power of another Person or (b) all or any substantial portion of the property (other than Capital Stock) of another Person, whether or not involving a merger or consolidation with such Person.

"*Administrative Agent*" means Bank of America in its capacity as administrative agent for the Lenders under any of the Credit Documents, or any successor administrative agent.

"*Administrative Agent's Office*" means, with respect to any currency, the Administrative Agent's address and, as appropriate, account as set forth on *Schedule 11.02* (as may be updated from time to time) with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify the Borrowers and the Lenders.

"*Administrative Questionnaire*" means an administrative questionnaire for the Lenders in a form supplied by the Administrative Agent.

"*Affiliate*" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"*Aggregate Commitments*" means the Domestic Revolving Commitments, the Foreign Revolving Commitments and the Foreign Term Loan Commitments.

"*Aggregate Commitment Percentage*" means, for each Lender, a fraction (expressed as a percentage carried to the ninth decimal place), the numerator of which is the amount of such Lender's respective Domestic Revolving Commitment, Foreign Revolving Commitment and Foreign Term Loan Commitment, and the denominator of which is the amount of the Aggregate Commitments.

"*Aggregate Domestic Revolving Commitments*" means the Domestic Revolving Commitments of all the Domestic Revolving Lenders.

"*Aggregate Foreign Revolving Commitments*" means the Foreign Revolving Commitments of all the Foreign Revolving Lenders.

"*Aggregate Domestic Revolving Committed Amount*" has the meaning provided in *Section 2.01(a)*.

"*Aggregate Foreign Revolving Committed Amount*" has the meaning provided in *Section 2.01(d)*.

"*Albuquerque Bond Indenture*" means that certain Trust Indenture, as amended and modified, among Bernalillo County, New Mexico, as issuer, and The Bank of New York Trust Company, N.A., as trustee, pursuant to which the Albuquerque Bonds may be issued.

"*Albuquerque Bonds*" means the Albuquerque Series 2005A Bonds and the Albuquerque Series 2005 B Bonds.

"*Albuquerque IRB Financing*" means the financing for the Albuquerque Project, including the Albuquerque Bonds, the Albuquerque Bond Indenture and the other bond documents referenced therein and relating thereto.

"*Albuquerque Project*" shall have the meaning given the term "Project" in the Albuquerque Bond Indenture.

"*Albuquerque Series 2005A Bonds*" means the Bernalillo County, New Mexico Taxable Variable Rate Industrial Revenue Bonds (Tempur Production USA, Inc. Project), Series 2005A, including any Additional Bonds issued as part thereof as referenced and defined in the Albuquerque Bond Indenture, in the aggregate principal amount of up to $75,000,000 under the Albuquerque Bond Indenture. The Albuquerque Series 2005A Bonds will be issued from time to time as provided in the Albuquerque Bond Indenture.

"*Albuquerque Series 2005B Bonds*" means the Bernalillo County, New Mexico Taxable Fixed Rate Unsecured Industrial Revenue Bonds (Tempur Production USA, Inc. Project), Series 2005B, in the aggregate principal amount of up to $25,000,000 under the Albuquerque Bond Indenture, and sometimes referred to herein and in the Albuquerque Bond Indenture as the "Self-Funded Bonds" representing the Company's "equity" in the Albuquerque Project. The Albuquerque Series 2005B Bonds will be purchased and held by an affiliate of TPUSA.

"*Alternative Currency*" means each of, Euro, the currency of a member state (other than the United States) of the Organization for Economic Co-operation and Development and each other currency (other than Dollars) that is approved in accordance with *Section 1.06*.

"*Applicable Percentage*" means the following percentages per annum, based on the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to *Section 7.02(b)*:

Pricing Level	Consolidated Leverage Ratio	Applicable Margin for Eurocurrency Rate Loans (Domestic Revolving Loans, Foreign Revolving Loans and Foreign Term Loan) and Letter of Credit Fee for Standby Letters of Credit (other than the IRB Letter of Credit)	Letter of Credit Fee for the IRB Letter of Credit	Applicable Margin for Base Rate Loans	Facility Fee
I	Less than or equal to 0.75:1.0	0.700%	0.450%	0.000%	0.175%
II	Greater than 0.75:1.0 but less than or equal to 1.25:1.0	0.800%	0.550%	0.000%	0.200%
III	Greater than 1.25:1.0 but less than or equal to 1.75:1.0	1.000%	0.750%	0.000%	0.250%
IV	Greater than 1.75:1.0	1.400%	1.150%	0.400%	0.350%

Any increase or decrease in the Applicable Percentage resulting from a change in the Consolidated Leverage Ratio shall become effective not later than the date five Business Days immediately following the date a Compliance Certificate is delivered pursuant to *Section 7.02(b)*; *provided*, however, that if a Compliance Certificate is not delivered when due in accordance therewith, then Pricing Level IV shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered until the date not later than five Business Days immediately following delivery thereof. The Applicable Percentage in effect from the Closing Date through the date for delivery of the Compliance Certificate for the fiscal quarter ending December 31, 2005 shall be determined based upon Pricing Level III. Determinations by the Administrative Agent of the appropriate Pricing Level shall be conclusive absent manifest error.

"*Applicable Time*" means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

"*Applicant Borrower*" has the meaning provided in *Section 2.14(b)*.

"*Approved Bank*" means (a) any Lender, (b) any domestic commercial bank of recognized standing having capital and surplus in excess of $500 million or (c) 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.

"*Approved Fund*" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"*Approved Jurisdictions*" means (i) the United States and any state or commonwealth thereof, (ii) any Participating Member State except Greece, and (iii) Denmark, Sweden, the United Kingdom or its political subdivisions, Switzerland, Canada or its provinces, and Bermuda.

"*Arranger*" means BAS, in its capacity as sole lead arranger and sole book manager.

"*Assignee Group*" means two or more Eligible Assignees that are Affiliates of one another or two ore more Approved Funds managed my the same investment advisor.

"*Assignment and Assumption*" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by *Section 11.06* and accepted by the Administrative Agent, in substantially the form of *Exhibit 11.06* or any other form approved by the Administrative Agent.

"*Attributable Principal Amount*" means (a) in the case of capital leases, the amount of capital lease obligations determined in accordance with GAAP, (b) in the case of Synthetic Leases, an amount determined by capitalization of the remaining lease payments thereunder as if it were a capital lease determined in accordance with GAAP, (c) in the case of Securitization Transactions, the outstanding principal amount of such financing, after taking into account reserve amounts and making appropriate adjustments, determined by the Administrative Agent in its reasonable judgment and (d) in the case of Sale and Leaseback Transactions, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease).

"*Bank of America*" means Bank of America, N.A., together with its successors.

"*Bank Bond Collateral*" has the meaning provided to such term in *Section 2.16(a)*.

"*Bank Bonds*" shall have the meaning provided to such term in the Albuquerque Bond Indenture and referenced in *Section 2.16* hereof.

"*BAS*" means Banc of America Securities LLC, together with its successors.

"*Base Rate*" means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate *plus* 1/2 of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate". The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"*Base Rate Loan*" means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

"*Beneficial Owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.

"*Borrowers*" means the Domestic Borrowers and the Foreign Borrowers.

"*Borrowing*" means (a) a borrowing consisting of simultaneous Loans of the same Type, in the same currency and, in the case of Eurocurrency Rate Loans, having the same Interest Period, or (b) a borrowing of Swingline Loans, as appropriate.

"*Business Day*" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office with respect to Obligations denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such

Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Credit Agreement in respect of any such Eurocurrency Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market;

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Credit Agreement in respect of any such Eurocurrency Rate Loan, means a TARGET Day;

(c) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Credit Agreement in respect of any such Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

"*CAM Exchange*" means the exchange of the Lenders' interests as provided in *Section 9.04*.

"*CAM Exchange Date*" means the date on which an Event of Default under *Section 9.01(f)* or *(g)* shall occur.

"*CAM Exchange Percentage*" means, as to each Lender, a fraction, expressed as decimal, of which (a) the numerator shall be the aggregate Dollar Equivalent of the sum of (i) the Specified Obligations owed to such Lender and (ii) such Lender's participations in undrawn amounts of Letters of Credit, in each case immediately prior to the CAM Exchange Date and (b) the denominator shall be the aggregate Dollar Equivalent of the sum of (i) the Specified Obligations owed to all the Lenders and (ii) the aggregate undrawn amount of all outstanding Letters of Credit, in each case immediately prior to the CAM Exchange Date.

"*Capital Stock*" means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests and (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"*Cash Collateral*" has the meaning provided in *Section 2.03(g)*.

"*Cash Collateralize*" has the meaning provided in *Section 2.03(g)*.

"*Cash Equivalents*" means (a) securities issued or directly and fully guaranteed or insured by (i) the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) or (ii) the governments of any Participating Member State, Sweden or Denmark, in each case having maturities of not more than twelve months from the date of acquisition, (b) Dollar or Alternative Currency denominated time deposits and certificates of deposit of any Approved Bank, in each case with maturities of not more than 270 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within six months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of $500 million for direct

obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least one hundred percent (100%) of the amount of the repurchase obligations and (e) Investments (classified in accordance with GAAP as current assets) in money market investment programs registered under the Investment Company Act of 1940, as amended, that are administered by reputable financial institutions having capital of at least $500 million and the portfolios of which are limited to Investments of the character described in the foregoing subclauses hereof.

"*Change in Law*" means the occurrence, after the date of this Credit Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"*Change of Control*" means the occurrence of any of the following:

(a) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of (x) the Parent and its Subsidiaries, taken as a whole, or (y) the Domestic Borrowers and their Subsidiaries, taken as whole, in either case to any "person" or "group" (as those terms are used in Section 13(d)(3) of the Exchange Act) other than one or more Principals and/or its or their respective Affiliates or Related Parties;

(b) the adoption of a plan relating to the liquidation or dissolution of the Parent or the Domestic Borrowers, provided that if the adoption of such plan is required to be approved by the Parent's stockholders, a Change of Control will only occur upon the adoption of such plan by the Parent's stockholders;

(c) the consummation of any transaction (including, without limitation, any merger or consolidation), the result of which is that any "person" (as defined above), other than the Principals or their Affiliates or Related Parties, becomes the Beneficial Owner, directly or indirectly, of more than 35% of the Voting Stock of the Parent, measured by voting power rather than number of shares;

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

(e) the Parent consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, the Parent, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Parent or such other Person is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of the Parent outstanding immediately prior to such transaction is converted into or exchanged for Voting Stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of such Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance);

(f) the Domestic Borrowers shall cease to be direct or indirect Wholly Owned Subsidiaries of TWH, TWH shall cease to be Wholly Owned Subsidiary of TW, or TW shall cease to be Wholly Owned Subsidiary of the Parent, except that TW or TWH may be merged with or into the Parent and TW and TWH may be merged with or into one another; or

(g) so long as any Senior Subordinated Notes are outstanding, any "Change of Control" (or any comparable term) as defined in the Senior Subordinated Notes shall occur.

"*Closing Date*" means the first date all conditions precedent in *Section 5.01* are satisfied or waived in accordance with *Section 11.01*.

"*Collateral*" means the collateral identified in, and at any time covered by, the Collateral Documents.

"*Collateral Agent*" means the Domestic Collateral Agent and/or the Foreign Collateral Agent, as appropriate.

"*Collateral Documents*" means the Domestic Collateral Documents and the Foreign Collateral Documents.

"*Commitment Period*" means the period from and including the Closing Date to the earlier of (a)(i) in the case of Revolving Loans and Swingline Loans, the Revolving Termination Date or (ii) in the case of the Letters of Credit, the L/C Expiration Date, or (b) the date on which the Revolving Commitments shall have been terminated as provided herein.

"*Commitments*" means the Domestic Revolving Commitments, the Domestic L/C Commitment, the Domestic Swingline Commitments, the Foreign Revolving Commitments, the Foreign L/C Commitment, the Foreign Swingline Commitments and the Foreign Term Loan Commitments.

"*Compliance Certificate*" means a certificate substantially in the form of *Exhibit 7.02(b)*.

"*Consolidated Adjusted EBITDA*" means, for any period for the Consolidated Group, the sum of (a) Consolidated EBITDA, *minus* (b) Consolidated Capital Expenditures other than (i) capital expenditures relating to the Albuquerque Facility that are financed with proceeds from the Albuquerque IRB Financing and (ii) capital expenditures that are financed with Indebtedness permitted under *Section 8.03(e)*. Except as otherwise expressly provided, the applicable period shall be the four consecutive fiscal quarters ending as of the date of determination.

"*Consolidated Capital Expenditures*" means, for any period for the Consolidated Group, without duplication, all expenditures (whether paid in cash or other consideration) during such period that, in accordance with GAAP, are or should be included in additions to property, plant and equipment or similar items reflected in the consolidated statement of cash flows for such period; *provided*, that Consolidated Capital Expenditures shall not include, for purposes hereof, (a) expenditures in connection with any Acquisition permitted hereunder or (b) expenditures of proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or property.

"*Consolidated EBITDA*" means, for any period for the Consolidated Group, the sum of (a) Consolidated Net Income, *plus* (b) to the extent deducted in determining net income, (i) Consolidated Interest Expense, (ii) taxes and (iii) depreciation and amortization, in each case on a consolidated basis determined in accordance with GAAP. Except as otherwise expressly provided, the applicable period shall be the four consecutive fiscal quarters ending as of the date of determination.

"*Consolidated Fixed Charge Coverage Ratio*" means, as of the last day of each fiscal quarter for the period of four consecutive fiscal quarters ending on such day, the ratio of (a) Consolidated Adjusted EBITDA on such day to (b) Consolidated Fixed Charges.

"*Consolidating financial statements*" means, with reference to any financial statements referred to herein, as applied to the accounts of the Parent and its Subsidiaries, collectively, (i) the consolidated financial statements and balance sheet of the Parent and its Domestic Subsidiaries, (ii) the consolidated financial statements and balance sheet of the Foreign Subsidiaries, and (iii) an accounting in respect of the intercompany adjustments made as between the consolidated financial statements and balance sheet of the Parent and its Domestic Subsidiaries and the consolidated financial statements and balance sheet of the Foreign Subsidiaries.

"*Consolidated Fixed Charges*" means, for any period for the Consolidated Group, the sum of (a) the cash portion of Consolidated Interest Expense, *plus* (b) scheduled principal payments made on Consolidated Funded Debt, *plus* (c) cash taxes paid, *plus* (d) Restricted Payments, *plus* (e) Investments under *Section 8.02(o)*.

"*Consolidated Funded Debt*" means Funded Debt of the Consolidated Group determined on a consolidated basis in accordance with GAAP.

"*Consolidated Group*" means the Parent and its consolidated subsidiaries, as determined in accordance with GAAP.

"*Consolidated Interest Expense*" means, for any period for the Consolidated Group, all interest expense on a consolidated basis determined in accordance with GAAP, but including, in any event, the interest component under Capital Leases and the implied interest component under Securitization Transactions. Except as expressly provided otherwise, the applicable period shall be the four consecutive fiscal quarters ending as of the date of determination.

"*Consolidated Leverage Ratio*" means, as of the last day of each fiscal quarter, the ratio of (a) Consolidated Funded Debt on such day to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters ending as of such day.

"*Consolidated Net Income*" means, for any period for the Consolidated Group, net income (or loss) determined on a consolidated basis in accordance with GAAP, but excluding for purposes of determining the Consolidated Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio, any extraordinary gains or losses (including the write-off of deferred finance charges) and related tax effects thereon. Except as otherwise expressly provided, the applicable period shall be the four consecutive fiscal quarters ending as of the date of determination.

"*Continuing Directors*" means, as of any date of determination, any member of the Board of Directors of the relevant Person who:

(a) was a member of such Board of Directors on the date of this Credit Agreement; or

(b) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board at the time of such nomination or election.

"*Contractual Obligation*" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"*Control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "*Controlling*" and "*Controlled*" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

"*Credit Agreement*" has the meaning provided in the recitals hereto, as the same may be amended and modified from time to time.

"*Credit Documents*" means this Credit Agreement, the Notes, the Fee Letters, the Issuer Documents, the Collateral Documents, the Guaranties, each Designated Borrower Request and Assumption Agreement, each Designated Borrower Notice and the Joinder Agreements.

"*Credit Extension*" means each of the following: (a) a Borrowing, (b) the conversion or continuation of a Borrowing, and (c) an L/C Credit Extension.

"*Credit Parties*" means, collectively, the Borrowers and the Guarantors.

"*Credit Party Materials*" has the meaning provided in *Section 7.02*.

"*Dan-Foam*" has the meaning provided in the recitals hereto.

"*Dan-Foam De-merger*" means (a) the acquisition by TWHSL of a Person ("*Newco*") organized under the laws of Denmark which shall become a direct Wholly Owned Subsidiary of TWHSL, and (b) the transfer by Dan-Foam of certain of its manufacturing and intellectual property assets (but not Capital Stock of Subsidiaries) to Newco.

"*Debtor Relief Laws*" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"*Default*" means any event, act or condition that constitutes an Event of Default or that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

"*Default Rate*" means an interest rate equal to (a) with respect to Obligations other than (i) Eurocurrency Rate Loans and (ii) Letter of Credit Fees, the Base Rate *plus* the Applicable Percentage, if any, applicable to such Loans *plus* 2% per annum; (b) with respect to Eurocurrency Rate Loans, the Eurocurrency Rate *plus* the Applicable Percentage, if any, and Mandatory Cost, if any, applicable to such Loans *plus* 2% per annum; and (c) with respect to Letter of Credit Fees, a rate equal to the Applicable Percentage *plus* 2% per annum.

"*Defaulting Lender*" means any Lender that (a) has failed to fund any portion of the Loans, participations in L/C Obligations or participations in Swingline Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder and has not cured such failure prior to the date of determination, (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, and has not cured such failure prior to the date of determination, or (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

"*Designated Borrower Notice*" has the meaning provided in *Section 2.14*.

"*Designated Borrower Request and Assumption Agreement*" has the meaning provided in *Section 2.14*.

"*Designated Borrowers*" means the Borrowers identified on *Schedule 2.14* and any Applicant Borrower that becomes a Borrower hereunder in accordance with the provisions of *Section 2.14*.

"*Designated Borrower Limit*" means (a) with respect to Newco, an amount equal to the Aggregate Foreign Revolving Committed Amount, with respect to Borrowings of Foreign Revolving Loans, and the aggregate amount of the Foreign Term Loan Commitments, with respect to the Borrowings of the Foreign Term Loan and (b) with respect to any other Designated Borrower, an amount equal to the lesser of the Aggregate Commitments and $5,000,000. The Designated Borrower Limit is part of, and not in addition to, the Aggregate Commitments.

"*Disposition*" or "*Dispose*" means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) of any Property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding, for purposes hereof, (a) Dispositions of obsolete, worn out or no longer useful property, whether now owned or hereafter acquired, in the ordinary course of business; (b) Dispositions of inventory, promotional materials and product displays in the ordinary course of business; and (c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property.

"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of an event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Senior Subordinated Notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the issuer of such Capital Stock to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that neither the Parent nor the Domestic Borrowers nor their respective Subsidiaries may repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption is permitted under the terms of this Credit Agreement.

"*Dollar*" or "*$*" means the lawful currency of the United States.

"*Dollar Equivalent*" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"*Domestic Borrowers*" means TP, TPUSA, and any Designated Borrowers that are identified as Domestic Borrowers on *Schedule 2.14*.

"*Domestic Collateral Agent*" means Bank of America in its capacity as collateral agent for the Lenders under any of the Domestic Collateral Documents, or any successor collateral agent.

"*Domestic Collateral Documents*" means the Domestic Security Agreement, the Domestic Pledge Agreement, the Domestic Mortgages and any other documents executed and delivered in connection with the attachment and perfection of security interests granted to secure the Obligations.

"*Domestic Credit Party*" means any Credit Party that is organized under the laws of any state of the United States or the District of Columbia.

"*Domestic Existing Letter of Credit*" means the letters of credit issued to a beneficiary located in the United States outstanding on the Closing Date and identified on *Schedule 2.03*.

"*Domestic Guarantor*" means (a) the Parent Guarantors, (b) the Domestic Borrowers, (c) the parties identified on the signature pages hereto as "Domestic Guarantors" and (d) each Person who after the Closing Date becomes a Domestic Guarantor pursuant to a Joinder Agreement or other documentation in form and substance reasonably acceptable to the Administrative Agent, in each case together with their respective successors and permitted assigns.

"*Domestic L/C Advance*" means, with respect to each Lender, such Lender's funding of its participation in any Domestic L/C Borrowing. All Domestic L/C Advances must be denominated in Dollars.

"*Domestic L/C Application*" means an application and agreement for the issuance or amendment of a Domestic Letter of Credit in the form from time to time in use by the Domestic L/C Issuer.

"*Domestic L/C Borrowing*" means any extension of credit resulting from a drawing under any Domestic Letter of Credit that has not been reimbursed or refinanced as a Borrowing of Domestic Revolving Loans. All Domestic L/C Borrowings must be denominated in Dollars or an Alternative Currency.

"*Domestic L/C Commitment*" means, with respect to the Domestic L/C Issuer, the commitment of the Domestic L/C Issuer to issue and to honor payment obligations under Domestic Letters of Credit, and, with respect to each Lender, the commitment of such Lender to purchase participation interests in Domestic L/C Obligations up to such Lender's Domestic Revolving Commitment Percentage thereof.

"*Domestic L/C Credit Extension*" means, with respect to any Domestic Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"*Domestic L/C Expiration Date*" means the day that is seven days prior to the Revolving Termination Date then in effect (or, if such day is not a Business Day, the immediately preceding Business Day).

"*Domestic L/C Issuer*" means (a) as to Domestic Existing Letters of Credit, those lenders identified as an issuer on *Schedule 2.03* and (b) Bank of America in its capacity as issuer of Letters to Credit hereunder, together with its successors in such capacity.

"*Domestic L/C Obligations*" means, at any time, the sum of (a) the maximum amount available to be drawn under Domestic Letters of Credit then outstanding, assuming compliance with all requirements for drawings referenced therein, plus (b) the aggregate amount of all Domestic L/C Unreimbursed Amounts, including Domestic L/C Borrowings. For purposes of computing the amount available to be drawn under any Domestic Letter of Credit, the amount of such Domestic Letter of Credit shall be determined in accordance with *Section 1.09*. For all purposes of this Credit Agreement, if on any date of determination a Domestic Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Domestic Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"*Domestic L/C Sublimit*" has the meaning provided in *Section 2.01(b)*.

"*Domestic L/C Unreimbursed Amount*" has the meaning provided in *Section 2.03(c)(i)(A)*.

"*Domestic Letter of Credit*" means each standby and commercial letter of credit issued hereunder by the Domestic L/C Issuer. Domestic Letters of Credit may be issued in Dollars.

"*Domestic Letter of Credit Fees*" has the meaning provided in *Section 2.09(b)(i)*.

"*Domestic Mortgage*" means those mortgages, deeds of trust, security deeds or like instruments given by any Domestic Credit Party, as grantor, to the Domestic Collateral Agent to secure any or all of the Obligations, and any other such instruments that may be given by an Person pursuant to the terms hereof, as such instruments may be amended and modified from time to time.

"*Domestic Obligations*" means the Obligations of any Domestic Credit Party.

"*Domestic Pledge Agreement*" means the pledge agreement dated as of the Closing Date given by the Domestic Credit Parties party thereto, as pledgors, to the Domestic Collateral Agent to secure the Obligations, and any other pledge agreement in favor of the Domestic Collateral Agent to secure all or some portion of the Obligations that may be given by any Person pursuant to the terms hereof, in each case as the same may be amended and modified from time to time.

"*Domestic Revolving Commitment*" means, for each Domestic Revolving Lender, the commitment of such Lender to make Domestic Revolving Loans (and to share in Domestic Revolving Obligations) hereunder.

"*Domestic Revolving Commitment Percentage*" means, for each Domestic Revolving Lender, a fraction (expressed as a percentage carried to the ninth decimal place), the numerator of which is such Lender's Domestic Revolving Committed Amount and the denominator of which is the Aggregate Domestic Revolving Committed Amount. The initial Domestic Revolving Commitment Percentages are set out in *Schedule 2.01*.

"*Domestic Revolving Committed Amount*" means, for each Domestic Revolving Lender, the amount of such Lender's Domestic Revolving Commitment. The initial Domestic Revolving Committed Amounts are set out in *Schedule 2.01*.

"*Domestic Revolving Lenders*" means those Lenders with Domestic Revolving Commitments, together with their successors and permitted assigns. The initial Domestic Revolving Lenders are identified on the signature pages hereto and are set out in *Schedule 2.01*.

"*Domestic Revolving Loan*" has the meaning provided in *Section 2.01(a)*.

"*Domestic Revolving Notes*" means the promissory notes, if any, given to evidence the Domestic Revolving Loans, as amended, restated, modified, supplemented, extended, renewed or replaced. A form of Domestic Revolving Note is attached as *Exhibit 2.13-1*.

"*Domestic Revolving Obligations*" means the Domestic Revolving Loans, the Domestic L/C Obligations and the Domestic Swingline Loans.

"*Domestic Security Agreement*" means the security agreement dated as of the Closing Date given by the Domestic Credit Parties party thereto, as grantors, to the Domestic Collateral Agent to secure the Obligations, and any other security agreement in favor of the Domestic Collateral Agent to secure all or some portion of the Obligations that may be given by any Person pursuant to the terms hereof, in each case as the same may be amended and modified from time to time.

"*Domestic Swingline Borrowing*" means a borrowing of a Domestic Swingline Loan pursuant to *Section 2.01(c)*.

"*Domestic Swingline Commitment*" means, with respect to the Domestic Swingline Lender, the commitment of the Domestic Swingline Lender to make Domestic Swingline Loans, and with respect to each Domestic Revolving Lender, the commitment of such Lender to purchase participation interests in Domestic Swingline Loans.

"*Domestic Swingline Lender*" means Fifth Third Bank, in its capacity as such, together with any successor in such capacity.

"*Domestic Swingline Loan*" has the meaning provided in *Section 2.01(c)*.

"*Domestic Swingline Note*" means the promissory note given to evidence the Domestic Swingline Loans, as amended, restated, modified, supplemented, extended, renewed or replaced. A form of Domestic Swingline Note is attached as *Exhibit 2.13-2*.

"*Domestic Swingline Sublimit*" has the meaning provided in *Section 2.01(c)*.

"*Domestic Subsidiary*" means any Subsidiary that is organized under the laws of any state of the United States or the District of Columbia.

"*Eligible Assignee*" means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by (i) the Administrative Agent, the applicable L/C Issuer and the applicable Swingline Lender, and (ii) unless an Event of Default has occurred and is continuing, the Borrowers (each such approval not to be unreasonably withheld or delayed); *provided* that notwithstanding the foregoing, "Eligible Assignee" shall not include the Borrowers or any of the Borrowers' Affiliates or Subsidiaries; and *provided further*, *however*, that an Eligible Assignee shall include only a Lender, an Affiliate of a Lender or another Person, which, through its Lending Offices, is capable of lending the applicable Alternative Currencies to the Borrowers without the imposition of any additional Indemnified Taxes, as the case may be.

"*EMU*" means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

"*EMU Legislation*" means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

"*Environmental Laws*" means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"*Environmental Liability*" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrowers, any other Credit Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"*Equity Transaction*" means, with respect to any member of the Consolidated Group, any issuance or sale of shares of its Capital Stock, other than an issuance (a) to a member of the Consolidated Group, (b) in connection with a conversion of debt securities to equity, (c) in connection with the exercise by a present or former employee, officer or director under a stock incentive plan, stock option plan or other equity-based compensation plan or arrangement, or (d) in connection with any Acquisition permitted hereunder.

"*ERISA*" means the Employee Retirement Income Security Act of 1974.

"*ERISA Affiliate*" means any trade or business (whether or not incorporated) under common control with a Borrower within the meaning of Section 414(b) or (c) of the Internal Revenue Code (and Sections 414(m) and (o) of the Internal Revenue Code for purposes of provisions relating to Section 412 of the Internal Revenue Code).

"*ERISA Event*" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by a Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition that would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Borrower or any ERISA Affiliate.

"*Euro*" and "*EUR*" mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

"*Eurocurrency Base Rate*" has the meaning specified in the definition of Eurocurrency Rate.

"*Eurocurrency Rate*" means for any Interest Period with respect to a Eurocurrency Rate Loan, a rate per annum determined by the Administrative Agent pursuant to the following formula:

$$\text{Eurocurrency Rate} = \frac{\text{Eurocurrency Base Rate}}{1.00 - \text{Eurocurrency Reserve Percentage}}$$

Where,

"*Eurocurrency Base Rate*" means, for such Interest Period, the rate per annum equal to the British Bankers Association LIBOR Rate ("*BBA LIBOR*"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the "Eurocurrency Base Rate" for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in the relevant currency for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch (or other Bank of America branch or Affiliate) to major banks in the London or other offshore interbank market for such currency at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period.

"*Eurocurrency Reserve Percentage*" means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities"). The Eurocurrency Rate for each outstanding Eurocurrency Rate Loan shall be adjusted automatically as of the effective date of any change in the Eurocurrency Reserve Percentage.

"*Eurocurrency Rate Loan*" means a Loan that bears interest at a rate based on the Eurocurrency Rate. Eurocurrency Rate Loans may be denominated in Dollars or in an Alternative Currency. All Loans denominated in an Alternative Currency must be Eurocurrency Rate Loans.

"*Event of Default*" has the meaning provided in *Section 9.01*.

"*Excluded Property*" means (a) unless reasonably requested by the Administrative Agent or the Required Lenders on thirty (30) days' prior written notice, any personal Property (including motor vehicles) in respect of which perfection of a Lien is not either (i) governed by the UCC or (ii) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office, (b) unless reasonably requested by the Administrative Agent or the Required Lenders on thirty (30) days' prior written notice, any leasehold interests, (c) any Property that is subject to a Lien permitted under *Section 8.01(j)* pursuant to documents that prohibit such Credit Party from granting any other Liens in such Property and (d) any permit, lease, license, contract or instrument now or hereafter in effect of a Credit Party if the grant of a security interest in such permit, lease, license, contract or instrument in a manner contemplated by this Credit Agreement, under the terms thereof or under applicable Law, is prohibited and would result in the termination thereof or give the other parties thereto the right to terminate, accelerate or otherwise materially and adversely alter such Credit Party's rights, titles and interests thereunder (including upon the giving of notice or the lapse of time or both).

"*Excluded Taxes*" means, with respect to the Administrative Agent, any Lender, either L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrowers hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which a Borrower is located and (c) except as provided in the following sentence, in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrowers under *Section 11.13*), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign

Lender's failure or inability (other than as a result of a Change in Law) to comply with *Section 3.01(e)*, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding tax pursuant to *Section 3.01(a)*. Notwithstanding anything to the contrary contained in this definition, "Excluded Taxes" shall not include any withholding tax imposed at any time on payments made by or on behalf of a Foreign Credit Party to any Lender hereunder or under any other Loan Document, *provided* that such Lender shall have complied with the last paragraph of *Section 3.01(e)*.

"*Existing Letters of Credit*" means the Domestic Existing Letters of Credit and the Foreign Existing Letters of Credit.

"*Exposure*" means, with respect to any Lender, the sum at such time, without duplication, of (a) such Lender's Domestic Revolving Commitment Percentage of the Outstanding Amount of the Domestic Revolving Obligations (including any participation interests in Domestic Letters of Credit) *plus* (b) such Lender's Foreign Revolving Commitment Percentage of the Outstanding Amount of the Foreign Revolving Obligations (including any participation interests in Foreign Letters of Credit), *plus* (c) the Outstanding Amount of such Lender's Foreign Term Loan.

"*Extraordinary Receipts*" means the receipt by any member of the Consolidated Group of any tax refunds, indemnity payments or pension reversions.

"*Federal Funds Rate*" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day immediately succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100th of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

"*Fee Letters*" means (a) the confidential letter agreement, dated September 7, 2005, among the Parent, Bank of America, N.A., as the Administrative Agent and Banc of America Securities LLC, as Arranger, (b) the confidential letter agreement, dated October 14, 2005, between the Parent and Nordea Bank Danmark A/S, as European Co-Agent and (c) the confidential letter agreement, dated October 14, 2005, between the Parent and Fifth Third Bank, as U.S. Co-Agent.

"*First-Tier Foreign Subsidiary*" means any Foreign Subsidiary that is owned directly by a Domestic Credit Party. Tempur Italia Srl and Tempur France SARL shall not be deemed First-Tier Foreign Subsidiaries so long as the percentage of each owned by the Domestic Credit Parties is no greater than the percentage of each owned by the Domestic Credit Parties as of the Closing Date.

"*Fiscal Agent*" shall have the meaning given such term in the Albuquerque Bond Indenture.

"*Flood Hazard Property*" means a property in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"*Foreign Borrowers*" means Dan-Foam, and any Designated Borrowers that are identified as Foreign Borrowers on *Schedule 2.14*.

"*Foreign Collateral Agent*" means Nordea in its capacity as collateral agent for the Lenders under any of the Foreign Collateral Documents, or any successor collateral agent.

"*Foreign Collateral Documents*" means the Foreign Security Agreements, the Foreign Pledge Agreements, the Foreign Mortgage and any other documents executed and delivered in connection with the attachment and perfection of security interests granted to secure the Foreign Obligations.

"*Foreign Credit Party*" means any Credit Party that is not a Domestic Credit Party.

"*Foreign Existing Letter of Credit*" means the letters of credit issued to a beneficiary located outside the United States outstanding on the Closing Date and identified on *Schedule 2.03*.

"*Foreign Guarantor*" means (a) the Domestic Guarantors (including the Domestic Borrowers and the Parent Guarantors), (b) the Foreign Borrowers, (c) the parties identified on the signature pages hereto as "Foreign Guarantors" and (d) each Person who after the Closing Date becomes a Foreign Guarantor pursuant to a Joinder Agreement or other documentation in form and substance reasonably acceptable to the Administrative Agent, in each case together with their respective successors and permitted assigns.

"*Foreign Lender*" means any Lender that is organized under the laws of a jurisdiction other than that in which a Borrower is resident for tax purposes. For purposes of this definition, the United States, each state thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"*Foreign L/C Advance*" means, with respect to each Lender, such Lender's funding of its participation in any Foreign L/C Borrowing. Foreign L/C Advances may be denominated in any Alternative Currency.

"*Foreign L/C Application*" means an application and agreement for the issuance or amendment of a Foreign Letter of Credit in the form from time to time in use by the Foreign L/C Issuer.

"*Foreign L/C Borrowing*" means any extension of credit resulting from a drawing under any Letter of Credit that has not been reimbursed or refinanced as a Borrowing of Foreign Revolving Loans. Foreign L/C Borrowings may be denominated in any Alternative Currency.

"*Foreign L/C Commitment*" means, with respect to the Foreign L/C Issuer, the commitment of the Foreign L/C Issuer to issue and to honor payment obligations under Foreign Letters of Credit, and, with respect to each Lender, the commitment of such Lender to purchase participation interests in Foreign L/C Obligations up to such Lender's Foreign Revolving Commitment Percentage thereof.

"*Foreign L/C Credit Extension*" means, with respect to any Foreign Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"*Foreign L/C Expiration Date*" means the day that is seven days prior to the Foreign Revolving Termination Date then in effect (or, if such day is not a Business Day, the immediately preceding Business Day).

"*Foreign Letter of Credit Fees*" has the meaning provided in *Section 2.09(b)(iii)*.

"*Foreign L/C Issuer*" means (a) as to Foreign Existing Letters of Credit, those lenders identified as an issuer on *Schedule 2.03*, (b) Nordea in its capacity as issuer of Letters of Credit hereunder, together with its successors in such capacity and (c) any Lender selected by the Borrowers and reasonably acceptable to the Administrative Agent.

"*Foreign L/C Issuer's Office*" means, with respect to any currency, the Foreign L/C Issuer's address and, as appropriate, account as set forth on *Schedule 11.02* with respect to such currency, or such other address or account with respect to such currency as the Foreign L/C Issuer may from time to time notify the Borrowers and the Lenders.

"*Foreign L/C Obligations*" means, at any time, the sum of (a) the maximum amount available to be drawn under Foreign Letters of Credit then outstanding, assuming compliance with all requirements for drawings

referenced therein, plus (b) the aggregate amount of all Unreimbursed Amounts, including Foreign L/C Borrowings. For purposes of computing the amount available to be drawn under any Foreign Letter of Credit, the amount of such Foreign Letter of Credit shall be determined in accordance with *Section 1.09*. For all purposes of this Credit Agreement, if on any date of determination a Foreign Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Foreign Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"*Foreign L/C Sublimit*" has the meaning provided in *Section 2.01(e)*.

"*Foreign L/C Unreimbursed Amount*" has the meaning provided in *Section 2.03(c)(i)(B)*.

"*Foreign Letter of Credit*" means each standby and commercial letter of credit issued hereunder by the Foreign L/C Issuer. Foreign Letters of Credit may be issued in Dollars or any Alternative Currency.

"*Foreign Loan Obligations*" means the Foreign Revolving Obligations and the Foreign Term Loan.

"*Foreign Mortgage*" means those mortgages, deeds of trust, security deeds or like instruments given by any Credit Party, as grantor, to the Foreign Collateral Agent to secure any or all of the Foreign Obligations, and any other such instruments that may be given by an Person pursuant to the terms hereof, as such instruments may be amended and modified from time to time.

"*Foreign Obligations*" means all Obligations of the Foreign Credit Parties.

"*Foreign Pledge Agreements*" means the (a) Pledge of Shares, dated as of the Closing Date, by TWHSL, as pledgor of Capital Stock in Dan-Foam, in favor of the Foreign Collateral Agent to secure the Foreign Obligations, (b) Pledge of Shares, dated as of the Closing Date, by Dan-Foam, as pledgor of Capital Stock in TD, in favor of the Foreign Collateral Agent to secure the Foreign Obligations and (c) any other pledge agreement in favor of the Foreign Collateral Agent to secure all or some portion of the Obligations that may be given by any Person pursuant to the terms hereof, in each case as the same may be amended and modified from time to time.

"*Foreign Revolving Commitment*" means, for each Foreign Revolving Lender, the commitment of such Lender to make Foreign Revolving Loans (and to share in Foreign Revolving Obligations) hereunder.

"*Foreign Revolving Commitment Percentage*" means, for each Foreign Revolving Lender, a fraction (expressed as a percentage carried to the ninth decimal place), the numerator of which is such Lender's Foreign Revolving Committed Amount and the denominator of which is the Aggregate Foreign Revolving Committed Amount. The initial Foreign Revolving Commitment Percentages are set out in *Schedule 2.01*.

"*Foreign Revolving Committed Amount*" means, for each Foreign Revolving Lender, the amount of such Lender's Foreign Revolving Commitment. The initial Foreign Revolving Committed Amounts are set out in *Schedule 2.01*.

"*Foreign Revolving Lenders*" means those Lenders with Foreign Revolving Commitments, together with their successors and permitted assigns. The initial Foreign Revolving Lenders are identified on the signature pages hereto and are set out in *Schedule 2.01*.

"*Foreign Revolving Notes*" means the promissory notes, if any, given to evidence the Foreign Revolving Loans, as amended, restated, modified, supplemented, extended, renewed or replaced. A form of Foreign Revolving Note is attached as *Exhibit 2.13-3*.

"*Foreign Revolving Loan*" has the meaning provided in *Section 2.01(d)*.

"*Foreign Revolving Obligations*" means the Foreign Revolving Loans, the Foreign L/C Obligations and the Foreign Swingline Loans.

"*Foreign Security Agreements*" means (a) the Danish Mortgage Deed (IPR) Pledge Agreement, dated as of the Closing Date, by Dan-Foam, as mortgagor of intellectual property rights in favor of the Foreign Collateral Agent to secure the Foreign Obligations, (b) the Swedish (IPR) Pledge and Security Assignment Agreement, dated as of the Closing Date, by Dan-Foam, as pledgor of certain intellectual property rights in favor of the Foreign Collateral Agent to secure the Foreign Obligations, and (c) any other security agreement in favor of the Foreign Collateral Agent to secure all or some portion of the Obligations that may be given by any Person pursuant to the terms hereof, in each case as the same may be amended and modified from time to time.

"*Foreign Subsidiary*" means any Subsidiary that is not a Domestic Subsidiary.

"*Foreign Swingline Borrowing*" means a borrowing of a Foreign Swingline Loan pursuant to *Section 2.01(f)*.

"*Foreign Swingline Commitment*" means, with respect to the Foreign Swingline Lender, the commitment of the Foreign Swingline Lender to make Foreign Swingline Loans, and with respect to each Foreign Revolving Lender, the commitment of such Lender to purchase participation interests in Foreign Swingline Loans.

"*Foreign Swingline Lender*" means Nordea, in its capacity as such, together with any successor in such capacity.

"*Foreign Swingline Loan*" has the meaning provided in *Section 2.01(f)*.

"*Foreign Swingline Note*" means the promissory note given to evidence the Foreign Swingline Loans, as amended, restated, modified, supplemented, extended, renewed or replaced. A form of Foreign Swingline Note is attached as *Exhibit 2.13-4*.

"*Foreign Swingline Sublimit*" has the meaning provided in *Section 2.01(f)*.

"*Foreign Term Lenders*" means, prior to the funding of the Foreign Term Loan, those Lenders with Foreign Term Loan Commitments, and after funding of the Foreign Term Loan, those Lenders holding a portion of the Foreign Term Loan, together with their successors and permitted assigns. The initial Foreign Term Lenders are identified on the signature pages hereto and are set out in *Schedule 2.01*.

"*Foreign Term Loan*" has the meaning provided in *Section 2.01(g)*.

"*Foreign Term Loan Commitment*" means, for each Foreign Term Lender, the commitment of such Lender to make a portion of the Foreign Term Loan hereunder; *provided* that, at any time prior to the final advance of the Foreign Term Loan and the termination or expiration of the Foreign Term Loan Commitment in connection therewith, determinations of "Required Lenders" and "Required Foreign Term Lenders" shall be based on the aggregate amount of the Foreign Term Loan Committed Amount, and thereafter, on the outstanding principal amount of the Foreign Term Loan.

"*Foreign Term Loan Commitment Percentage*" means, for each Foreign Term Lender, a fraction (expressed as a percentage carried to the ninth decimal place), the numerator of which is, prior to funding of the Foreign Term Loan, such Lender's Foreign Term Loan Committed Amount, and after funding of the Foreign Term Loan, is the principal amount of such Lender's Foreign Term Loan, and the denominator of which is, prior to funding of the Foreign Term Loan, the aggregate principal amount of the Foreign Term Loan Commitments, and after funding of the Foreign Term Loan, the Outstanding Amount of the Foreign Term Loan. The initial Foreign Term Loan Commitment Percentages are set out in *Schedule 2.01*.

"*Foreign Term Loan Committed Amount*" means, for each Foreign Term Lender, the amount of such Lender's Foreign Term Loan Commitment. The initial Foreign Term Loan Committed Amounts are set out in *Schedule 2.01*.

"*Foreign Term Note*" means the promissory notes substantially in the form of *Exhibit 2.13-5*, if any, given to evidence the Foreign Term Loans, as amended, restated, modified, supplemented, extended, renewed or replaced.

"*FRB*" means the Board of Governors of the Federal Reserve System of the United States.

"*Fund*" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"*Funded Debt*" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations for borrowed money, whether current or long-term (including the Obligations hereunder), and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all purchase money indebtedness (including indebtedness and obligations in respect of conditional sales and title retention arrangements, except for customary conditional sales and title retention arrangements with suppliers that are entered into in the ordinary course of business) and all indebtedness and obligations in respect of the deferred purchase price of property or services (other than trade accounts payable incurred in the ordinary course of business);

(c) all direct obligations under letters of credit (including standby and commercial), bankers' acceptances and similar instruments (including bank guaranties, surety bonds, comfort letters, keep-well agreements and capital maintenance agreements) to the extent such instruments or agreements support financial, rather than performance, obligations;

(d) the Attributable Principal Amount of capital leases and Synthetic Leases;

(e) the Attributable Principal Amount of Securitization Transactions;

(f) all preferred stock and comparable equity interests providing for mandatory redemption, sinking fund or other like payments;

(g) Support Obligations in respect of Funded Debt of another Person;

(h) Funded Debt of any partnership or joint venture or other similar entity in which such Person is a general partner or joint venturer, and, as such, has personal liability for such obligations, but only to the extent there is recourse to such Person for payment thereof.

For purposes hereof, the amount of Funded Debt shall be determined (i) based on the outstanding principal amount in the case of borrowed money indebtedness under *clause (a)* and purchase money indebtedness and the deferred purchase obligations under *clause (b)*, (ii) based on the maximum amount available to be drawn in the case of letter of credit obligations and the other obligations under *clause (c)*, and (iii) based on the amount of Funded Debt that is the subject of the Support Obligations in the case of Support Obligations under *clause (g)*.

"*GAAP*" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board in the United States, that are applicable to the circumstances as of the date of determination, consistently applied, subject to the provisions of *Section 1.03*.

"*Governmental Authority*" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"*Guarantors*" means the Domestic Guarantors and the Foreign Guarantors.

"*Guaranty*" means (a) the guaranty provided pursuant to Article IV hereof, (b) the Guarantee, dated as of the Closing Date, given by Dan-Foam, as guarantor, to guaranty payment of the Foreign Obligations, (c) the Guarantee, dated as of the Closing Date, given by TD, as guarantor, to guaranty payment of the Foreign Obligations and/or (d) any other guaranty agreement given by any Person pursuant to the terms hereof, in each case as the same may be amended and modified from time to time.

"*Hazardous Materials*" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"*Indebtedness*" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all Funded Debt;

(b) all contingent obligations under letters of credit (including standby and commercial), bankers' acceptances and similar instruments (including bank guaranties, surety bonds, comfort letters, keep-well agreements and capital maintenance agreements) to the extent such instruments or agreements support financial, rather than performance, obligations;

(c) net obligations under any Swap Contract;

(d) Support Obligations in respect of Indebtedness of another Person; and

(e) Indebtedness of any partnership or joint venture or other similar entity in which such Person is a general partner or joint venturer, and, as such, has personal liability for such obligations, but only to the extent there is recourse to such Person for payment thereof.

For purposes hereof, the amount of Indebtedness shall be determined (i) based on Swap Termination Value in the case of net obligations under Swap Contracts under *clause (c)* and (ii) based on the outstanding principal amount of the Indebtedness that is the subject of the Support Obligations in the case of Support Obligations under *clause (d)*.

"*Indemnified Taxes*" means Taxes other than Excluded Taxes.

"*Indemnitees*" has the meaning provided in *Section 11.04(b)*.

"*Information*" has the meaning specified in *Section 11.07*.

"*Interest Payment Date*" means, (a) as to any Base Rate Loan (including Domestic Swingline Loans), the last Business Day of each March, June, September and December, the Revolving Termination Date and the date of the final principal amortization payment on the Foreign Term Loan and, in the case of any Swingline Loan, any other dates as may be mutually agreed upon by the Borrowers and the Swingline Lender, and (b) as to any Eurocurrency Rate Loan (including Foreign Swingline Loans), the last Business Day of each Interest Period for such Loan, the date of repayment of principal of such Loan, the Revolving Termination Date and the date of the final principal amortization payment on the Foreign Term Loan, and in addition, where the applicable Interest Period exceeds three months, the date every three months after the beginning of such Interest Period. If an Interest Payment Date falls on a date that is not a Business Day, such Interest Payment Date shall be deemed to be the immediately succeeding Business Day.

"*Interest Period*" means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six months thereafter, as selected by the Borrowers in their Loan Notice; *provided* that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the immediately succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(c) no Interest Period with respect to any Revolving Loan shall extend beyond the Revolving Termination Date; and

(d) no Interest Period with respect to the Foreign Term Loan shall extend beyond any principal amortization payment date, except to the extent that the portion of such Loan comprised of Eurocurrency Rate Loans that is expiring prior to the applicable principal amortization payment date *plus* the portion comprised of Base Rate Loans equals or exceeds the principal amortization payment then due.

"*Internal Revenue Code*" means the Internal Revenue Code of 1986.

"*Investment*" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Capital Stock of another Person, (b) a loan, advance or capital contribution to, guaranty or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor undertakes any Support Obligation with respect to Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"*Involuntary Disposition*" means the receipt by any member of the Consolidated Group of any cash insurance proceeds or condemnation awards payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of its Property.

"*IRB Letter of Credit*" means the irrevocable direct-pay letter of credit issued by the Domestic L/C Issuer hereunder in support of the Albuquerque Series 2005A Bonds in an aggregate maximum amount not to exceed Seventy-Five Million Nine Hundred Thousand Dollars ($75,900,000). The IRB Letter of Credit will be in a maximum stated amount equal to the sum of a principal amount equal to the principal amount of the Albuquerque Series 2005A Bonds then outstanding plus an interest coverage amount equal to 35 days interest at an assumed rate of 12% per annum based on a 365 day year. The IRB Letter of Credit will be amended and increased to support Additional Bonds that may be issued from time to time under the Albuquerque Bond Indenture. A form of the IRB Letter of Credit, as required under the Albuquerque Bond Indenture is attached as *Exhibit 2.03*.

"*IRS*" means the United States Internal Revenue Service.

"*ISP*" means, with respect to any Letter of Credit, 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 of such Letter of Credit).

"*Issuer Documents*" means, with respect to any Letter of Credit, the Domestic L/C Application or Foreign L/C Application, as applicable, and any other document, agreement or instrument (including such Letter of Credit) entered into by the Borrowers (or any of their respective Subsidiaries) and the respective L/C Issuer (or in favor of such L/C Issuer), relating to such Letter of Credit.

"*Joinder Agreement*" means (a) with respect to any Domestic Guarantor, a joinder agreement substantially in the form of *Exhibit 7.12* executed and delivered in accordance with the provisions of *Section 7.12* and (b) with respect to any Foreign Guarantor, a joinder agreement reasonably acceptable to the Administrative Agent.

"*Laws*" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the

interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"*L/C Borrowing*" means a Domestic L/C Borrowing and/or a Foreign L/C Borrowing, as appropriate.

"*L/C Credit Extension*" means a Domestic L/C Credit Extension and/or a Foreign L/C Credit Extension, as appropriate.

"*L/C Expiration Date*" means a Domestic L/C Expiration Date and/or a Foreign L/C Expiration Date, as appropriate.

"*L/C Issuer*" means (a) the Domestic L/C Issuer or (b) the Foreign L/C Issuer, in each case together with its successors in such capacity.

"*L/C Obligations*" means the Domestic L/C Obligations and the Foreign L/C Obligations.

"*Lender*" means each of the Persons identified as a "Lender" on the signature pages hereto (and, as appropriate, includes the Swingline Lenders), together with their respective successors and assigns.

"*Lending Office*" means, as to any Lender, the office or offices of such Lender set forth in such Lender's Administrative Questionnaire or such other office or offices as a Lender may from time to time notify the Borrowers and the Administrative Agent.

"*Letter of Credit*" means each Existing Letter of Credit and each Domestic Letter of Credit and Foreign Letter of Credit issued hereunder.

"*Letter of Credit Fees*" means the Domestic Letter of Credit Fees and the Foreign Letter of Credit Fees.

"*Lien*" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property and any financing lease having substantially the same economic effect as any of the foregoing).

"*Loan*" means any Domestic Revolving Loan, Domestic Swingline Loan, Foreign Revolving Loan, Foreign Swingline Loan (including Overdraft Advances) Loans and Eurocurrency Rate Loans comprising such Loans.

"*Loan Notice*" means a notice of (a) a Borrowing of Loans (including Swingline Loans), (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, which, if in writing, shall be substantially in the form of *Exhibit 2.02*.

"*Loan Obligations*" means the Domestic Revolving Obligations and the Foreign Loan Obligations.

"*Mandatory Cost*" means, with respect to any period, the percentage rate per annum determined in accordance with *Schedule 1.01*.

"*Material Adverse Effect*" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Consolidated Group taken as a whole; (b) a material impairment of the ability of the Credit Parties as a whole to perform their obligations under the Credit Documents; or (c) a material adverse effect upon the legality, validity, binding effect or the enforceability against any Credit Party of any Credit Document to which it is a party.

"*Moody's*" means Moody's Investors Service, Inc. and any successor thereto.

"*Mortgage*" means Domestic Mortgages and/or Foreign Mortgages, as appropriate.

"*Mortgaged Property*" means the real property of the Albuquerque Project and each other real property set forth on *Schedule 6.22* that is identified as a Mortgaged Property thereon and each other real property that is, or pursuant to the terms hereof, becomes, the subject of a Mortgage.

"*Multiemployer Plan*" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which a Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"*N Bor*" means Nordea's market-related overnight rate based on the interest rates applicable to Nordea's funding in the short-term money markets. N Bor is fixed daily at 3:00 p.m. (Copenhagen time) and is shown in Unitel, Nordea's electronic banking system.

"*Net Cash Proceeds*" means the aggregate proceeds paid in cash or Cash Equivalents received by any member of the Consolidated Group in connection with any Disposition or Equity Transaction, net of (a) direct costs (including legal, accounting and investment banking fees, sales commissions and underwriting discounts) and (b) estimated taxes paid or payable as a result thereof. For purposes hereof, "Net Cash Proceeds" includes any cash or Cash Equivalents received upon the disposition of any non-cash consideration received by any member of the Consolidated Group in any Disposition or Equity Transaction.

"*Newco*" has the meaning provided in the definition of "Dan-Foam De-merger".

"*Non-Guarantor Domestic Subsidiary*" has the meaning provided in *Section 7.12(a)*.

"*Non-Guarantor Foreign Subsidiary*" has the meaning provided in *Section 7.12(b)*.

"*Nordea*" means Nordea Bank Danmark A/S, together with its successors.

"*Notes*" means the Revolving Notes, the Swingline Notes and the Foreign Term Notes.

"*Obligations*" means, without duplication, (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Credit Party arising under any Credit Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Credit Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, (b) all obligations under any Swap Contract between any Credit Party and any Lender or Affiliate of a Lender to the extent permitted hereunder and (c) all obligations under any Treasury Management Agreement between any Credit Party and any Lender or Affiliate of a Lender.

"*Organization Documents*" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and the operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"*Other Taxes*" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Credit Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Credit Agreement or any other Credit Document.

"*Outstanding Amount*" means (i) with respect to Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Loans occurring on such date; (ii) with respect to Swingline Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Swingline Loans occurring on such date; and (iii) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts.

"*Overdraft Advances*" has the meaning provided in *Section 2.04(f)*.

"*Overdraft Documents*" means the documents, agreements and instruments from time to time governing the Overdraft Facility.

"*Overdraft Facility*" has the meaning specified in *Section 2.04(f)*.

"*Overnight Rate*" means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent, the applicable L/C Issuer, or the applicable Swingline Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, the rate of interest per annum at which overnight deposits in the applicable Alternative Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America in the applicable offshore interbank market for such currency to major banks in such interbank market.

"*Parent*" has the meaning provided in the recitals hereto.

"*Parent Guarantors*" means (a) the Parent, (b) TW and (c) TWH.

"*Participant*" has the meaning specified in *Section 11.06(d)*.

"*Participating Member State*" means the member states of the European Union that have adopted the Euro as their lawful currency as of the Closing Date (being, Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain).

"*Payment Blockage Period*" has the meaning provided in *Section 2.16(f)*.

"*PBGC*" means the Pension Benefit Guaranty Corporation.

"*Pension Plan*" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by a Borrower or any ERISA Affiliate or to which a Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

"*Permitted Acquisition*" means any Acquisition that satisfies the following conditions:

(a) if the Consolidated Leverage Ratio is more than 2.00:1.0 on a Pro Forma Basis after giving effect to the proposed Acquisition, the aggregate cost of such Acquisition, together with all other such Acquisitions following the Closing Date (regardless of whether such Acquisitions were consummated while the Consolidated Leverage Ratio had been less than 2:00:1.0), shall not exceed an amount equal to $50,000,000;

(b) in the case of an Acquisition of the Capital Stock, the board of directors (or other comparable governing body) of such other Person shall have approved the Acquisition; and

(c) (A) no Default or Event of Default shall exist and be continuing immediately before or immediately after giving effect thereto, (B) the Consolidated Group shall be in compliance with the financial covenants hereunder after giving effect thereto on a Pro Forma Basis, and (C) at least five Business Days prior to the consummation of such Acquisition, a Responsible Officer of the applicable Borrower shall provide a compliance certificate, in form and substance satisfactory to the Administrative Agent, affirming compliance with each of the items set forth in clauses *(a)* through *(c)* hereof.

"*Permitted Liens*" means Liens permitted pursuant to *Section 8.01*.

"*Person*" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"*Plan*" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by a Borrower or, with respect to any such plan that is subject to Section 412 of the Internal Revenue Code or Title IV of ERISA, any ERISA Affiliate.

"*Platform*" has the meaning provided in *Section 7.02*.

"*Pledge Agreement*" means the Domestic Pledge Agreement and/or the Foreign Pledge Agreement.

"*Principals*" means each of TA Associates, Inc. and Friedman Fleischer & Lowe, LLC and their respective Affiliates.

"*Pro Forma Basis*" means, with respect to any transaction, for purposes of determining the applicable pricing level under the definition of "Applicable Percentage" and determining compliance with the financial covenants hereunder, that such transaction shall be deemed to have occurred as of the first day of the period of four consecutive fiscal quarters ending as of the end of the most recent fiscal quarter for which annual or quarterly financial statements shall have been delivered in accordance with the provisions hereof. Further, for purposes of making calculations on a "Pro Forma Basis" hereunder, (a) in the case of any Disposition, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject of such Disposition shall be excluded to the extent relating to any period prior to the date thereof and (ii) Indebtedness paid or retired in connection with such Disposition shall be deemed to have been paid and retired as of the first day of the applicable period; (b) in the case of any Acquisition, merger or consolidation or calculation with respect to any Investment under *Section 8.02(o)*, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject thereof shall be included to the extent relating to any period prior to the date thereof and (ii) Indebtedness incurred in connection with such transaction (if any), shall be deemed to have been incurred as of the first day of the applicable period (and interest expense shall be imputed for the applicable period assuming prevailing interest rates hereunder or the documents pursuant to which the relevant Indebtedness and interest expense shall be incurred, if applicable); and (c) in the case of any calculation with respect to the incurrence of any Funded Debt under *Section 8.03(h)* or the making of any Restricted Payment under *Section 8.06(d)*, Indebtedness incurred in connection with such transaction (if any) shall be deemed to have occurred at the first day of the applicable period (and interest expense shall be imputed for the applicable period assuming prevailing interest rates hereunder or the documents pursuant to which the relevant Indebtedness and interest expense shall be incurred, if applicable).

"*Property*" means an interest of any kind in any property or asset, whether real, personal or mixed, and whether tangible or intangible.

"*Register*" has the meaning provided in *Section 11.06(c)*.

"*Related Parties*" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"*Reportable Event*" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived.

"*Request for Credit Extension*" means (a) with respect to a Borrowing of Loans (including Swingline Loans) or the conversion or continuation of Loans, a Loan Notice and (b) with respect to an L/C Credit Extension, an L/C Application.

"*Required Domestic Revolving Lenders*" means, as of any date of determination, Lenders having more than 50% of the Aggregate Domestic Revolving Commitments or, if the Domestic Revolving Commitments shall have expired or been terminated, Lenders holding more than 50% of the aggregate principal amount of Domestic Revolving Obligations (including, in each case, the aggregate principal amount of each Lender's risk participation and funded participation in Domestic L/C Obligations and Domestic Swingline Loans); *provided* that the Domestic Revolving Commitment of, and the portion of Domestic Revolving Obligations held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Domestic Revolving Lenders.

"*Required Foreign Revolving Lenders*" means, as of any date of determination, at least two Lenders having more than 50% of the Aggregate Foreign Revolving Commitments or, if the Foreign Revolving Commitments shall have expired or been terminated, Lenders holding more than 50% of the aggregate principal amount of Foreign Revolving Obligations (including, in each case, the aggregate principal amount of each Lender's risk participation and funded participation in Foreign L/C Obligations and Foreign Swingline Loans); *provided* that the Foreign Revolving Commitment of, and the portion of Foreign Revolving Obligations held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Foreign Revolving Lenders.

"*Required Foreign Term Lenders*" means, as of any date of determination, Lenders having more than 50% of the aggregate principal amount of Foreign Term Loan Commitments; *provided* that the Foreign Term Loan Commitments held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Foreign Term Lenders.

"*Required Lenders*" means, as of any date of determination, at least two Lenders having more than 50% of the Aggregate Commitments or, if the Commitments shall have expired or been terminated, at least two Lenders holding in the aggregate more than 50% of the Loan Obligations (including, in each case, the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swingline Loans); *provided* that the commitments of, and the portion of the Loan Obligations held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"*Responsible Officer*" means an officer functioning as the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or secretary of a Credit Party. Any document delivered hereunder that is signed by a Responsible Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Credit Party.

"*Restricted Payment*" means (a) any dividend or other distribution (whether in cash, securities or other property) by the Parent in respect of its Capital Stock, or any payment (whether in cash, securities or other

property) including any sinking fund payment or similar deposit, for or on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Capital Stock of the Parent or any option, warrant or other right to acquire any such Capital Stock of the Parent and (b) the prepayment, purchase or redemption of any Subordinated Debt of the Consolidated Group prior to scheduled maturity.

"*Revaluation Date*" means (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of a Eurocurrency Rate Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency pursuant to *Section 2.02*, and (iii) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (iii) each date of any payment by the applicable L/C Issuer under any Letter of Credit denominated in an Alternative Currency, (iv) in the case of the Existing Letters of Credit, the Closing Date, and (v) such additional dates as the Administrative Agent or the applicable L/C Issuer shall determine or the Required Lenders shall require.

"*Revolving Commitments*" means the Domestic Revolving Commitments and/or the Foreign Revolving Commitments, as appropriate.

"*Revolving Commitment Percentage*" means the Domestic Revolving Commitment Percentage and/or the Foreign Revolving Commitment Percentage, as appropriate.

"*Revolving Committed Amount*" means the Domestic Revolving Committed Amount and/or the Foreign Revolving Committed Amount, as appropriate.

"*Revolving Lenders*" means the Domestic Revolving Lenders and/or the Foreign Revolving Lenders, as appropriate.

"*Revolving Loan*" means the Domestic Revolving Loan and/or the Foreign Revolving Loan, as appropriate.

"*Revolving Notes*" means the Domestic Revolving Notes and/or the Foreign Revolving Notes, as appropriate.

"*Revolving Obligations*" means the Domestic Revolving Obligations and the Foreign Revolving Obligations.

"*Revolving Termination Date*" means October 18, 2010.

"*S&P*" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"*Sale and Leaseback Transaction*" means, with respect to a Borrower or any of its Subsidiaries, any arrangement, directly or indirectly, with any Person (other than a Credit Party) whereby such Borrower or such Subsidiary shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"*Same Day Funds*" means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

"*Screen Rate*" means, for any Interest Period:

(a) the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate that appears on the page of the Telerate screen (or any successor thereto) that displays an average British Bankers Association Interest Settlement Rate for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period; or

(b) if the rate referenced in the preceding clause (a) does not appear on such page or service or such page or service shall cease to be available, the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate on such other page or other service that displays an average British Bankers Association Interest Settlement Rate for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period.

"*SEC*" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"*Securitization Transaction*" means any financing or factoring or similar transaction (or series of such transactions) entered by any member of the Consolidated Group pursuant to which such member of the Consolidated Group may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment (the "*Securitization Receivables*") to a special purpose subsidiary or affiliate (a "*Securitization Subsidiary*") or any other Person.

"*Security Agreements*" means the Domestic Security Agreement and the Foreign Security Agreement.

"*Self-Funded Bonds*" means the Albuquerque Series 2005B Bonds.

"*Senior Debt*" means (i) the principal of and interest on the loans and obligations owing under this Credit Agreement, as amended, modified, extended, renewed, refunded or replaced, including all fees, indemnities, charges, expenses and other monetary obligations and interest accruing subsequent to commencement of a bankruptcy or an insolvency proceeding, whether or not such interest is allowed as a claim in any such proceeding, (ii) all obligations under any Swap Contracts between any Credit Party and any Lender or an Affiliate of a Lender, and (iii) all obligations under any Treasury Management Agreement between any Credit Party and any Lender or an Affiliate of a Lender.

"*Senior Subordinated Notes*" means the 10 1/4% Senior Subordinated Notes due 2010 issued pursuant to the terms of the Senior Subordinated Notes Indenture.

"*Senior Subordinated Notes Indenture*" means that certain Indenture, dated as of August 15, 2003, by and among TP, TPUSA, the guarantors identified therein, and Wells Fargo Bank Minnesota, National Association, as trustee.

"*Specified Obligations*" means Obligations consisting of principal of and interest on the Loans, reimbursement obligations in respect of Letters of Credit and fees.

"*Spot Rate*" for a currency means the rate determined by the Administrative Agent or the applicable L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; *provided* that the Administrative Agent or the applicable L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the applicable L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such

currency; and *provided further* that the applicable L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

"*Subordinated Debt*" means (i) the Senior Subordinated Notes, and (ii) any Indebtedness that by its terms is expressly subordinated in right of payment to the prior payment of the Loan Obligations on terms and conditions, and evidenced by documentation, satisfactory to the Administrative Agent and the Required Lenders.

"*Subsidiary*" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise provided, "Subsidiary" shall refer to a Subsidiary of the Parent.

"*Support Obligations*" means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Support Obligations shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Support Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

"*Swap Contract*" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "*Master Agreement*"), including any such obligations or liabilities under any Master Agreement.

"*Swap Termination Value*" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination values determined in accordance therewith, such termination values, and (b) for any date prior to the date referenced in clause *(a)*, the amounts determined as the mark-to-market values for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"*Swingline Borrowing*" means a Domestic Swingline Borrowing and/or a Foreign Swingline Borrowing, as appropriate.

"*Swingline Commitment*" means a Domestic Swingline Commitment and/or a Foreign Swingline Commitment, as appropriate.

"*Swingline Lender*" means the Domestic Swingline Lender and/or the Foreign Swingline Lender, as appropriate.

"*Swingline Loan*" means a Domestic Swingline Loan and/or a Foreign Swingline Loan, as appropriate.

"*Swingline Note*" means a Domestic Swingline Note and/or a Foreign Swingline Note, as appropriate.

"*Synthetic Lease*" means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing arrangement that is considered borrowed money indebtedness for tax purposes but is classified as an operating lease under GAAP.

"*TARGET Day*" means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

"*Taxes*" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"*TD*" means Tempur Danmark A/S, a capital stock company existing under the laws of Denmark.

"*TPI*" has the meaning provided in the recitals hereto.

"*TPUSA*" has the meaning provided in the recitals hereto.

"*Tranche*" means a category of Commitments and Credit Extensions thereunder. For purposes hereof, each of the following comprises a separate Tranche: (a) the Domestic Revolving Commitments and the Domestic Revolving Loans, (b) the Foreign Revolving Commitments and the Foreign Revolving Loans and (c) the Foreign Term Loan Commitment and the Foreign Term Loan.

"*Treasury Management Agreement*" means any agreement governing the provision of treasury or cash management services, including deposit accounts, funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services.

"*TW*" has the meaning provided in the recitals hereto.

"*TWH*" has the meaning provided in the recitals hereto.

"*TWHSL*" means Tempur World Holdings, S.L., a company organized under the laws of Spain.

"*Type*" means, with respect to any Revolving Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

"*UCC*" means the Uniform Commercial Code in effect in any applicable jurisdiction from time to time.

"*Unfunded Pension Liability*" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Internal Revenue Code for the applicable plan year.

"*United States*" or "*U.S.*" means the United States of America.

"*Unreimbursed Amount*" means Domestic L/C Unreimbursed Amounts and/or Foreign L/C Unreimbursed Amounts, as appropriate.

"*Voting Stock*" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"*Wholly Owned Subsidiary*" means, with respect to any direct or indirect Subsidiary of any Person, that 100% of the Capital Stock with ordinary voting power issued by such Subsidiary (other than directors' qualifying shares and investments by foreign nationals mandated by applicable Law) is beneficially owned, directly or indirectly, by such Person. For purposes of this Agreement, Tempur Italia Srl and Tempur France SARL shall each be considered Wholly Owned Subsidiaries of their direct and indirect parents so long as the Capital Stock of each such Person is held by the same Persons holding such Capital Stock as of the Closing Date.

1.02 ***Interpretive Provisions.***

With reference to this Credit Agreement and each other Credit Document, unless otherwise specified herein or in such other Credit Document:

(a) 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, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "*herein*", "*hereof*" and "*hereunder*", and words of similar import when used in any Credit Document, shall be construed to refer to such Credit Document in its entirety and not to any particular provision thereof, (iv) all references in a Credit Document to "*Articles*", "*Sections*", "*Exhibits*" and "*Schedules*" shall be construed to refer to articles and sections of, and exhibits and schedules to, the Credit Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "*asset*" and "*property*" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) 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 "*to and including.*"

(c) Section headings herein and in the other Credit Documents are included for convenience of reference only and shall not affect the interpretation of this Credit Agreement or any other Credit Document.

1.03 ***Accounting Terms and Provisions*****.**

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted

pursuant to this Credit Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the audited financial statements referenced in *Section 5.01(d)*, *except* as otherwise specifically prescribed herein.

(b) Notwithstanding any provision herein to the contrary, determinations of (i) the applicable pricing level under the definition of "Applicable Percentage" and (ii) compliance with the financial covenants shall be made on a Pro Forma Basis.

(c) If at any time any change in GAAP or in the consistent application thereof would affect the computation of any financial ratio or requirement set forth in any Credit Document, and either the Borrowers or the Required Lenders shall object in writing to determining compliance based on such change, then such computations shall continue to be made on a basis consistent with the most recent financial statements delivered pursuant to *Section 7.01(a)* or *(b)* as to which no such objection has been made.

1.04 ***Rounding*****.**

Any financial ratios required to be maintained by the Borrowers pursuant to this Credit Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 ***Exchange Rates; Currency Equivalents*****.**

(a) The Administrative Agent or the applicable L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Credit Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Credit Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the applicable L/C Issuer, as applicable.

(b) Wherever in this Credit Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Eurocurrency Rate Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Dollar Equivalent of such amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be.

1.06 ***Additional Alternative Currencies*****.**

(a) The Borrowers may from time to time request that Eurocurrency Rate Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency;" *provided* that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Eurocurrency Rate Loans, such request shall be subject to the approval of the Administrative Agent and the Lenders; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the applicable L/C Issuer.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., twenty (20) Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the applicable L/C Issuer,

in its or their sole discretion). In the case of any such request pertaining to Eurocurrency Rate Loans, the Administrative Agent shall promptly notify each Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the applicable L/C Issuer thereof. Each Lender (in the case of any such request pertaining to Eurocurrency Rate Loans) or the applicable L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., ten Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Lender or an L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or such L/C Issuer, as the case may be, to permit Eurocurrency Rate Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Lenders consent to making Eurocurrency Rate Loans in such requested currency, the Administrative Agent shall so notify the Borrowers and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Borrowings of Eurocurrency Rate Loans; and if the Administrative Agent and the applicable L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrowers and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this *Section 1.06*, the Administrative Agent shall promptly so notify the Borrowers. Any specified currency of an Existing Letter of Credit that is neither Dollars nor one of the Alternative Currencies specifically listed in the definition of "Alternative Currency" shall be deemed an Alternative Currency with respect to such Existing Letter of Credit only.

1.07 ***Change of Currency*****.**

(a) Each obligation of the Borrowers to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Credit Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; *provided* that if any Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Credit Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Credit Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

1.08 ***Times of Day*****.**

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.09 ***Letter of Credit Amounts*****.**

Unless otherwise provided, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the Dollar Equivalent of the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Issuer Documents related thereto, whether or not such maximum face amount is in effect at such time.

1.10 ***Limitation on Obligations of Foreign Credit Parties*****.**

Notwithstanding anything set forth in this Credit Agreement or any other Credit Document to the contrary, no Foreign Credit Party and/or Foreign Subsidiary shall at any time be liable, directly or indirectly, for any portion of the Domestic Obligations, including, without limitation, the principal of the Domestic Revolving Loan or any interest thereon or fees payable with respect thereto (and the Domestic Credit Parties are solely liable for such Obligations), and no Property of any Foreign Credit Party and/or Foreign Subsidiary shall at any time serve, directly or indirectly, as Collateral or any other type of collateral or security for any portion of the Domestic Obligations.

ARTICLE II

COMMITMENTS AND CREDIT EXTENSIONS

2.01 ***Commitments*****.**

Subject to the terms and conditions set forth herein:

(a) *Domestic Revolving Loans*. During the Commitment Period, each Domestic Revolving Lender severally agrees to make revolving credit loans (the "*Domestic Revolving Loans*") to the Domestic Borrowers in Dollars, from time to time, on any Business Day; *provided* that after giving effect to any such Domestic Revolving Loan, (i) with regard to the Domestic Revolving Lenders collectively, the Outstanding Amount of Domestic Revolving Obligations shall not exceed TWO HUNDRED MILLION DOLLARS ($200,000,000) (as such amount may be decreased in accordance with the provisions hereof, the "*Aggregate Domestic Revolving Committed Amount*"), (ii) with regard to each Domestic Revolving Lender individually, such Lender's Domestic Revolving Commitment Percentage of Domestic Revolving Obligations shall not exceed its respective Domestic Revolving Committed Amount and (iii) the aggregate Outstanding Amount of all Loans made to the Designated Borrowers shall not exceed the Designated Borrower Limit. Domestic Revolving Loans may consist of Base Rate Loans, Eurocurrency Rate Loans, or a combination thereof, as the Domestic Borrowers may request, and may be repaid and reborrowed in accordance with the provisions hereof.

(b) *Domestic Letters of Credit*. During the Commitment Period, (i) the Domestic L/C Issuer, in reliance upon the commitments of the Domestic Revolving Lenders set forth herein, agrees (A) to issue Domestic Letters of Credit denominated in Dollars for the account of the Domestic Borrowers or any member of the Consolidated Group on any Business Day, (B) to amend or extend Letters of Credit previously issued hereunder, and (C) to honor drawings under Letters of Credit; and (ii) the Domestic Revolving Lenders severally agree to purchase from the Domestic L/C Issuer a participation interest in the Domestic Existing Letters of Credit and Domestic Letters of Credit issued hereunder in an amount equal to such Lender's Domestic Revolving Commitment Percentage thereof; *provided* that (A) the Outstanding Amount of Domestic L/C Obligations shall not exceed the Aggregate Domestic Revolving Committed Amount (as such amount may be decreased in accordance with the provisions hereof, the "*Domestic L/C Sublimit*"), (B) with respect to each Designated Borrower, the aggregate principal amount of Domestic Revolving Obligations owing by such Designated Borrower shall not exceed its Designated Borrowing Limit with regard to the Domestic Revolving Lenders collectively, (C) the maximum amount available to be drawn under the IRB Letter of Credit will not exceed $75,900,000, (D) the Outstanding Amount of Domestic Revolving Obligations shall not exceed the Aggregate Domestic Revolving Committed Amount, and (E) with regard to each Domestic Revolving Lender individually, such Lender's Domestic Revolving Commitment Percentage of Domestic Revolving Obligations shall not exceed its respective Domestic Revolving Committed Amount. Subject to the terms and conditions hereof, each Domestic Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly each Borrower may obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. Domestic Existing Letters of Credit shall be deemed to have been issued hereunder and shall be subject to and governed by the terms and conditions hereof.

(c) *Domestic Swingline Loans*. During the Commitment Period, the Domestic Swingline Lender agrees, in reliance upon the commitments of the other Domestic Revolving Lenders set forth herein, to make revolving

credit loans (the "*Domestic Swingline Loans*") to the Domestic Borrowers in Dollars on any Business Day; *provided* that (i) the Outstanding Amount of Domestic Swingline Loans shall not exceed TEN MILLION DOLLARS ($10,000,000) (as such amount may be decreased in accordance with the provisions hereof, the "*Domestic Swingline Sublimit*"), (ii) with respect to each Designated Borrower, the aggregate principal amount of Domestic Revolving Obligations owing by such Designated Borrower shall not exceed its Designated Borrowing Limit and (iii) with respect to the Domestic Revolving Lenders collectively, the Outstanding Amount of Domestic Revolving Obligations shall not exceed the Aggregate Domestic Revolving Committed Amount. Domestic Swingline Loans shall be comprised solely of Base Rate Loans, and may be repaid and reborrowed in accordance with the provisions hereof. Immediately upon the making of a Domestic Swingline Loan, each Domestic Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Domestic Swingline Lender a participation interest in such Domestic Swingline Loan in an amount equal to the product of such Lender's Domestic Revolving Commitment Percentage thereof; *provided* that the participation interest shall not be funded except on demand as provided in *Section 2.04(b)(ii)*.

(d) *Foreign Revolving Loans*. During the Commitment Period, each Foreign Revolving Lender severally agrees to make revolving credit loans (the "*Foreign Revolving Loans*") to the Foreign Borrowers in Dollars or Alternative Currencies, from time to time, on any Business Day; *provided* that after giving effect to any such Foreign Revolving Loan, (i) with regard to the Foreign Revolving Lenders collectively, the Outstanding Amount of Foreign Revolving Obligations shall not exceed THIRTY MILLION DOLLARS ($30,000,000) (as such amount may be decreased in accordance with the provisions hereof, the "*Aggregate Foreign Revolving Committed Amount*"), (ii) with respect to each Designated Borrower, the aggregate principal amount of Foreign Revolving Obligations owing by such Designated Borrower shall not exceed its Designated Borrowing Limit and (iii) with regard to each Foreign Revolving Lender individually, such Lender's Foreign Revolving Commitment Percentage of Foreign Revolving Obligations shall not exceed its respective Foreign Revolving Committed Amount and (iii) the aggregate Outstanding Amount of all Loans made to the Designated Borrowers shall not exceed the Designated Borrower Limit. Foreign Revolving Loans shall consist of Eurocurrency Rate Loans and may be repaid and reborrowed in accordance with the provisions hereof.

(e) *Foreign Letters of Credit*. During the Commitment Period, (i) the Foreign L/C Issuer, in reliance upon the commitments of the Foreign Revolving Lenders set forth herein, agrees (A) to issue Foreign Letters of Credit denominated in Dollars or Alternative Currencies for the account of the Foreign Borrowers or any Foreign Subsidiary on any Business Day, (B) to amend or extend Letters of Credit previously issued hereunder, and (C) to honor drawings under Foreign Letters of Credit; and (ii) the Foreign Revolving Lenders severally agree to purchase from the Foreign L/C Issuer a participation interest in the Foreign Existing Letters of Credit and Foreign Letters of Credit issued hereunder in an amount equal to such Lender's Foreign Revolving Commitment Percentage thereof; *provided* that (A) the Outstanding Amount of Foreign L/C Obligations shall not exceed the Aggregate Foreign Revolving Committed Amount (as such amount may be decreased in accordance with the provisions hereof, the "*Foreign L/C Sublimit*"), (B) with respect to each Designated Borrower, the aggregate principal amount of Foreign Revolving Obligations owing by such Designated Borrower shall not exceed its Designated Borrowing Limit with regard to the Foreign Revolving Lenders collectively, (C) the Outstanding Amount of Foreign Revolving Obligations shall not exceed the Aggregate Foreign Revolving Committed Amount, and (D) with regard to each Foreign Revolving Lender individually, such Lender's Foreign Revolving Commitment Percentage of Foreign Revolving Obligations shall not exceed its respective Foreign Revolving Committed Amount. Subject to the terms and conditions hereof, each Foreign Borrower's ability to obtain Foreign Letters of Credit shall be fully revolving, and accordingly each Borrower may obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. Foreign Existing Letters of Credit shall be deemed to have been issued hereunder and shall be subject to and governed by the terms and conditions hereof.

(f) *Foreign Swingline Loans*. During the Commitment Period, the Foreign Swingline Lender agrees, in reliance upon the commitments of the other Foreign Revolving Lenders set forth herein, to make revolving credit loans (the "*Foreign Swingline Loans*") to the Foreign Borrowers in Dollars or Alternative Currencies on any

Business Day; *provided* that (i) the Outstanding Amount of Foreign Swingline Loans shall not exceed TWENTY MILLION DOLLARS ($20,000,000) (as such amount may be decreased in accordance with the provisions hereof, the "*Foreign Swingline Sublimit*"), (ii) with respect to each Designated Borrower, the aggregate principal amount of Foreign Revolving Obligations owing by such Designated Borrower shall not exceed its Designated Borrowing Limit and (iii) with respect to the Foreign Revolving Lenders collectively, the Outstanding Amount of Foreign Revolving Obligations shall not exceed the Aggregate Foreign Revolving Committed Amount. Foreign Swingline Loans shall bear an interest rate corresponding to N Bor (or such other rate as may be mutually agreed between the Foreign Swingline Lender and the Foreign Borrowers) and may be repaid and reborrowed in accordance with the provisions hereof. Immediately upon the making of a Foreign Swingline Loan, each Foreign Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Foreign Swingline Lender a participation interest in such Foreign Swingline Loan in an amount equal to the product of such Lender's Foreign Revolving Commitment Percentage thereof; *provided* that the participation interest shall not be funded except on demand as provided in *Section 2.04(b)(ii)*.

(g) *Foreign Term Loan*. On and after the Closing Date, each of the Foreign Term Lenders severally agrees to make its portion of a term loan (in the amount of its respective Foreign Term Loan Committed Amount) to the Foreign Borrowers in up to two advances at any time before December 31, 2005, in Euro or Danish kroners, in an aggregate principal amount of ONE HUNDRED TEN MILLION DOLLARS ($110,000,000) (the "*Foreign Term Loan*"). The Foreign Term Loan shall consist of Eurocurrency Rate Loans. Amounts repaid on the Foreign Term Loan may not be reborrowed.

2.02 ***Borrowings, Conversions and Continuations under Domestic Revolving Loans, Foreign Revolving Loans and Foreign Term Loans*.**

(a) (i) *Domestic Revolving Loans and the Foreign Term Loan*. With respect to Domestic Revolving Loans and the Foreign Term Loan, each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the applicable Borrowers' irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) with respect to Eurocurrency Rate Loans denominated in Dollars or any conversion of Eurocurrency Rate Loans denominated in Dollars to Base Rate Loans, three Business Days prior to the requested date thereof and (ii) with respect to Base Rate Loans, on the requested date of, any Borrowing, conversion or continuation.

(ii) *Foreign Revolving Loans*. With respect to Foreign Revolving Loans, each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the applicable Borrowers' irrevocable notice to Nordea and the Administrative Agent, which may be given by telephone. Each such notice must be received by Nordea not later than 11:00 a.m. (Copenhagen time) three Business Days prior to the requested date thereof.

(b) Each telephonic notice by the Borrowers pursuant to this *Section 2.02(b)* must be confirmed promptly by delivery to the Administrative Agent (and Nordea pursuant to *Section 2.02(a)(ii)*, if applicable) of a written Loan Notice, appropriately completed and signed by a Responsible Officer of a Borrower. Except as provided in *Sections 2.03(c)* and *2.04(b)*, each Borrowing, conversion or continuation shall be in a principal amount of (i) with respect to Eurocurrency Rate Loans, $5 million or a whole multiple of $1 million in excess thereof or (ii) with respect to Base Rate Loans, $500,000 or a whole multiple of $100,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether the Borrowers' request is with respect to Revolving Loans or the Foreign Term Loan, (ii) whether such request is for a Borrowing, conversion, or continuation, (iii) the requested date of such Borrowing, conversion or continuation (which shall be a Business Day), (iv) the principal amount of Loans to be borrowed, converted or continued, (v) the Type of Loans to be borrowed, converted or continued, (vi) if applicable, the duration of the Interest Period with respect thereto and (vii) the currency of the Loans to be borrowed. If the Borrowers fail to specify a currency in a Loan Notice requesting a Borrowing, then the Loans so requested shall be made in Dollars. If the Borrowers fail to specify a Type of Loan in a Loan Notice or if the Borrowers fail to give a timely notice requesting a conversion or

continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans; *provided*, however, that in the case of a failure to timely request a continuation of Loans denominated in an Alternative Currency, such Loans shall be continued as Eurocurrency Rate Loans in their original currency with an Interest Period of one month. Any automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrowers request a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any Loan Notice, but fails to specify an Interest Period, the Interest Period will be deemed to be one month. No Loan may be converted into or continued as a Loan denominated in a different currency, but instead must be prepaid in the original currency of such Loan and reborrowed in the other currency.

(c) Following its receipt of a Loan Notice (other than a Loan Notice provided to Nordea pursuant to *Section 2.02(a)(ii)*, if applicable), the Administrative Agent shall promptly notify each Lender of the amount (and currency) of its pro rata share of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrowers, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Loans denominated in a currency other than Dollars, in each case as described in the preceding subsection. In the case of a Borrowing (other than a Borrowing of Foreign Revolving Loans), each Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable currency not later than 1:00 p.m., in the case of any Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Loan in an Alternative Currency, in each case on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in *Section 5.02* (and, if such Borrowing is the initial Credit Extension, *Section 5.01*), the Administrative Agent shall make all funds so received available to the applicable Borrowers in like funds as received by the Administrative Agent either by (A) crediting the account of the Borrowers on the books of Bank of America with the amount of such funds or (B) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrowers (provided that, in the case of a Borrowing of Foreign Revolving Loans, Nordea shall make the requested funds available to the applicable Borrowers either by (x) crediting the account of the applicable Borrowers on the books of Nordea with the amount of such funds or (y) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) Nordea by the applicable Borrowers); *provided*, however, that if, on the date of any Borrowing (1) there are Domestic L/C Borrowings outstanding, then the proceeds of such Borrowing, *first*, shall be applied to the payment in full of any such Domestic L/C Borrowing, and *second*, shall be made available to the Borrowers as provided above and (2) there are Foreign L/C Borrowings outstanding, then the proceeds of such Borrowing, *first*, shall be applied to the payment in full of any such Foreign L/C Borrowing in the same currency, and *second*, shall be made available to the Borrowers as provided above.

(d) Except as otherwise provided herein, without the consent of the Required Lenders, (i) a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan and (ii) any conversion into, or continuation as, a Eurocurrency Rate Loan may be made only if the conditions to Credit Extensions in *Section 5.02* have been satisfied. During the existence of a Default or Event of Default, (i) no Loan may be requested as, converted to or continued as a Eurocurrency Rate Loan (whether in Dollars or any Alternative Currency) and (ii) at the request of the Required Lenders, any outstanding Eurocurrency Rate Loan shall be converted to a Base Rate Loan on the last day of the Interest Period with respect thereto.

(e) The Administrative Agent shall promptly notify the Borrowers and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrowers and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(f) If Nordea ceases to hold any Foreign Revolving Commitments, then (i) the provisions set forth in this Section that are applicable to Nordea shall cease to apply to Nordea and (ii) the Foreign Borrowers shall select

another Foreign Revolving Lender to serve in the place of Nordea with respect to the provisions in this Section; *provided* that such Foreign Revolving Lender (A) agrees to perform such obligations and (B) is acceptable to the Administrative Agent.

2.03 ***Additional Provisions with respect to Letters of Credit.***

(a) *Obligation to Issue or Amend*.

(i) Neither the Domestic L/C Issuer nor the Foreign L/C Issuer shall issue any Letter of Credit if:

(A) the expiry date would occur more than two years from the date of issuance, in case of the IRB Letter of Credit, or more than one year from the date of issuance, in the case of other Letters of Credit, unless the Required Domestic Revolving Lenders or the Required Foreign Revolving Lenders, as appropriate, shall have otherwise given their approval;

(B) for Letters of Credit other than the IRB Letter of Credit, the expiry date of any such Letter of Credit would occur after the L/C Expiration Date, unless the Required Domestic Revolving Lenders or the Required Foreign Revolving Lenders, as appropriate, shall have otherwise given their approval; or

(C) any such Letter of Credit is to be used for purposes other than those permitted under *Section 7.11*, unless the Required Domestic Revolving Lenders or the Required Foreign Revolving Lenders, as appropriate, shall have otherwise given their approval.

(ii) Neither the Domestic L/C Issuer nor the Foreign L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense that was not applicable on the Closing Date and that such L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate any Law or one or more policies of such L/C Issuer;

(C) except as otherwise agreed by the applicable L/C Issuer and the Administrative Agent, such Letter of Credit is in an initial stated amount less than $100,000, in the case of a commercial Letter of Credit, or $250,000, in the case of a standby Letter of Credit;

(D) with respect to Domestic Letters of Credit, such Letter of Credit is to be denominated in a currency other than Dollars (except as otherwise agreed by the Administrative Agent);

(E) such L/C Issuer does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency;

(F) such Letter of Credit contains provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(G) a default of any Lender's obligations to fund under *Section 2.03(c)* exists or any Lender is at such time a Defaulting Lender, unless such L/C Issuer has entered into satisfactory arrangements with the Borrowers or such Lender to eliminate such L/C Issuer's risk with respect to such Lender.

(iii) Neither L/C Issuer shall amend any Letter of Credit if such L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(iv) Neither L/C Issuer shall be under any obligation to amend any Letter of Credit if:

(A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof; or

(B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(v) The Domestic L/C Issuer shall act on behalf of the Lenders with respect to any Domestic Letters of Credit issued by it and the documents associated therewith. The Foreign L/C Issuer shall act on behalf of the Lenders with respect to any Foreign Letters of Credit issued by it and the documents associated therewith. Each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in *Article X* with respect to any acts taken or omissions suffered by an L/C Issuer in connection with Letters of Credit issued by them or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in *Article X* included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuers.

(b) *Procedures for Issuance and Amendment; Auto-Extension Letters of Credit*.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrowers delivered to the Domestic L/C Issuer or Foreign L/C Issuer, as appropriate (with a copy to the Administrative Agent) in the form of a Domestic L/C Application or a Foreign L/C Application, as applicable, appropriately completed and signed by a Responsible Officer. Domestic L/C Applications must be received by the Domestic L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days prior to the proposed issuance date or date of amendment, as the case may be, or such later date and time as the Domestic L/C Issuer and the Administrative Agent may agree in a particular instance in their sole discretion. In the case of a request for an initial issuance of a Domestic Letter of Credit, such Domestic L/C Application shall specify in form and detail satisfactory to the Domestic L/C Issuer: (A) the proposed issuance date of the requested Domestic Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the Domestic L/C Issuer may require. Foreign L/C Applications must be received by the Foreign L/C Issuer and the Administrative Agent (A) not later than 12:00 noon (Copenhagen time) at least three Business Days prior to the proposed issuance date or date of amendment, as the case may be and (B) not later than 12:00 noon a.m. (Copenhagen time) at least three Business Days prior to the proposed issuance date or date of amendment, as the case may be, of any Foreign Letter of Credit denominated in Dollars (or, in each case, such later date and time as the Foreign L/C Issuer may agree in a particular instance in its sole discretion). In the case of a request for an initial issuance of a Foreign Letter of Credit, such Foreign L/C Application shall specify in form and detail satisfactory to the Foreign L/C Issuer: (A) the proposed issuance date of the requested Foreign Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the Foreign L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Domestic L/C Application or Foreign L/C Application, as applicable, shall specify in form and detail satisfactory to the applicable L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the applicable L/C Issuer may require. Additionally, the Borrowers shall furnish to the applicable L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the applicable L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Domestic L/C Application or Foreign L/C Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative

Agent has received a copy of such Domestic L/C Application or Foreign L/C Application from the Borrowers and, if not, the applicable L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the applicable L/C Issuer has received written notice from the Administrative Agent, any Lender or any Credit Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in *Article V* shall not then be satisfied, then, subject to the terms and conditions hereof, the applicable L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrowers (or their Subsidiaries) or enter into the applicable amendment, as the case may be, in each case in accordance with such L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable L/C Issuer a risk participation in such Letter of Credit in an amount equal to such Lender's Revolving Commitment Percentage thereof.

(iii) If a Borrower so requests in an L/C Application, the applicable L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "*Auto-Extension Letter of Credit*"); *provided* that any such Auto-Extension Letter of Credit must permit the applicable L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "*Non-Extension Notice Date*") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, a Borrower shall not be required to make a specific request to the such L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Domestic L/C Expiration Date or Foreign L/C Expiration Date, as applicable; *provided*, however, that the applicable L/C Issuer shall not permit any such extension if (A) such L/C Issuer has determined that it would not be permitted or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of *Section 2.03(a)* or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Lender or any Borrower that one or more of the applicable conditions specified in *Section 5.02* (and *Section 5.03*, with respect to the IRB Letter of Credit) is not then satisfied, and in each case directing such L/C Issuer not to permit such extension.

(iv) If a Borrower so requests in any L/C Application, the applicable L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an "*Auto-Reinstatement Letter of Credit*"). Unless otherwise directed by the applicable L/C Issuer, a Borrower shall not be required to make a specific request to such L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits the applicable L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the "*Non-Reinstatement Deadline*"), the applicable L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Reinstatement Deadline (A) from the Administrative Agent that the Required Lenders have elected not to permit such reinstatement or (B) from the Administrative Agent, any Lender or any Borrower that one or more of the applicable conditions specified in *Section 5.02* (and *Section 5.03*, with respect to the IRB Letter of Credit) is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing the applicable L/C Issuer not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Borrowers and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(vi) Each L/C Issuer will provide to the Administrative Agent, at least quarterly and more frequently upon request of the Administrative Agent, a summary report on the Letters of Credit it has issued, including, among other things, on whose account each Letter of Credit is issued and each Letter of Credit's beneficiary, face amount and expiry date.

(c) *Drawings and Reimbursements; Funding of Participations.*

(i) (A) *Drawings of Domestic Letters of Credit*. Upon any drawing under any Domestic Letter of Credit, the Domestic L/C Issuer shall notify the Domestic Borrowers and the Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by the Domestic L/C Issuer under a Domestic Letter of Credit to be reimbursed in Dollars (such date, an "*Domestic L/C Honor Date*"), the Domestic Borrowers shall reimburse the Domestic L/C Issuer in Dollars in an amount equal to the amount of such drawing. The Domestic L/C Issuer shall notify the Administrative Agent of any failure of the Domestic Borrowers to reimburse a drawn Domestic Letter of Credit. If the Domestic Borrowers fail to so reimburse the Domestic L/C Issuer by such time, the Administrative Agent shall promptly notify each Domestic Revolving Lender of the Domestic L/C Honor Date, the amount of the unreimbursed drawing (the "*Domestic L/C Unreimbursed Amount*"), and the amount of such Lender's Domestic Revolving Commitment Percentage thereof. In such event, the Domestic Borrowers shall be deemed to have requested a Borrowing of Base Rate Loans to be disbursed on the Domestic L/C Honor Date in an amount equal to the Domestic L/C Unreimbursed Amount, without regard to the minimum and multiples specified in *Section 2.02* for the principal amount of Base Rate Loans, the amount of the unutilized portion of the Aggregate Domestic Revolving Committed Amount or the conditions set forth in *Section 5.02* (or *Section 5.03*, with respect to the IRB Letter of Credit). Any notice given by the Domestic L/C Issuer or the Administrative Agent pursuant to this *Section 2.03(c)(i)(A)* may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(B) *Drawings of Foreign Letters of Credit*. Upon any drawing under any Foreign Letter of Credit, the Foreign L/C Issuer shall notify the Foreign Borrowers and the Administrative Agent thereof. Not later than 11:00 a.m. (Copenhagen time) on the date of any payment by the Foreign L/C Issuer under a Foreign Letter of Credit to be reimbursed in the currency in which the Foreign Letter of Credit is denominated (such date, a "*Foreign L/C Honor Date*"), the Foreign Borrowers shall reimburse the Foreign L/C Issuer in such currency in an amount equal to the amount of such drawing. The Foreign L/C Issuer shall notify the Administrative Agent of any failure of the Foreign Borrowers to reimburse a drawn Foreign Letter of Credit. If the Borrowers fail to so reimburse the Foreign L/C Issuer by such time, the Administrative Agent shall promptly notify each Lender of the Foreign L/C Honor Date, the amount of the unreimbursed drawing (the "*Foreign L/C Unreimbursed Amount*"), and the amount of such Lender's Revolving Commitment Percentage thereof. In such event, the Foreign Borrowers shall be deemed to have requested a Borrowing of Eurocurrency Rate Loans (in the applicable currency) to be disbursed on the Foreign L/C Honor Date in an amount equal to the Foreign L/C Unreimbursed Amount, without regard to the minimum and multiples specified in *Section 2.02* for the principal amount of Eurocurrency Rate Loans, the amount of the unutilized portion of the Aggregate Foreign Revolving Committed Amount or the conditions set forth in *Section 5.02.* Any notice given by the Foreign L/C Issuer or the Administrative Agent pursuant to this *Section 2.03(c)(i)(B)* may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) (A) *Funding of Domestic Letters of Credit*. Each Lender shall upon any notice pursuant to *Section 2.03(c)(i)(A)* make funds available to the Administrative Agent for the account of the Domestic L/C

Issuer, in Dollars, at the Administrative Agent's Office for Dollar-denominated payments in an amount equal to its Revolving Commitment Percentage of the Domestic L/C Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of *Section 2.03(c)(iii)(A)*, each Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Base Rate Loan to the Domestic Borrowers in such amount. The Administrative Agent shall remit the funds so received to the Domestic L/C Issuer in Dollars.

(C) *Funding of Foreign Letters of Credit*. Each Lender shall upon any notice pursuant to *Section 2.03(c)(i)(B)* make funds available to the Administrative Agent for the account of the Foreign L/C Issuer, in the Alternative Currency in which the drawn Foreign Letter of Credit is denominated, at the Foreign L/C Issuer's Office in an amount equal to its Revolving Commitment Percentage of the Foreign L/C Unreimbursed Amount not later than 11:00 a.m. (Copenhagen time) on the Business Day specified in such notice by the Foreign L/C Issuer, whereupon, subject to the provisions of *Section 2.03(c)(iii)(B)*, each Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Eurocurrency Rate Loan to the Foreign Borrowers in such amount.

(iii) (A) With respect to any Domestic L/C Unreimbursed Amount that is not fully refinanced by a Borrowing of Base Rate Loans for any reason, the Domestic Borrowers shall be deemed to have incurred from the Domestic L/C Issuer a Domestic L/C Borrowing in the amount of the Domestic L/C Unreimbursed Amount that is not so refinanced, which Domestic L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Administrative Agent for the account of the Domestic L/C Issuer pursuant to *Section 2.03(c)(ii)(A)* shall be deemed payment in respect of its participation in such Domestic L/C Borrowing and shall constitute a Domestic L/C Advance from such Lender in satisfaction of its participation obligation under this *Section 2.03*.

(B) With respect to any Foreign L/C Unreimbursed Amount that is not fully refinanced by a Borrowing of Eurocurrency Rate Loans for any reason, the Foreign Borrowers shall be deemed to have incurred from the Foreign L/C Issuer a Foreign L/C Borrowing in the amount of the Foreign L/C Unreimbursed Amount that is not so refinanced, which Foreign L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Foreign L/C Issuer (or to the Administrative Agent for the account of the Foreign L/C Issuer) pursuant to *Section 2.03(c)(ii)(B)* shall be deemed payment in respect of its participation in such Foreign L/C Borrowing and shall constitute a Foreign L/C Advance from such Lender in satisfaction of its participation obligation under this *Section 2.03*.

(iv) Until each Lender funds its Revolving Loan or Domestic L/C Advance or Foreign L/C Advance, as applicable pursuant to this *Section 2.03(c)* to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Revolving Commitment Percentage of such amount shall be solely for the account of the applicable L/C Issuer.

(v) Each Lender's obligation to make Revolving Loans or Domestic L/C Advances or Foreign L/C Advances, as applicable, to reimburse the applicable L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this *Section 2.03(c)*, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right that such Lender may have against the applicable L/C Issuer, the applicable Borrowers or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default, (C) non-compliance with the conditions set forth in *Section 5.02*, or (D) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that the applicable L/C Issuer shall have complied with the applicable provisions of *Section 2.03(b)(ii)*. No such making of a Domestic L/C Advance or Foreign L/C Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the applicable L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the Domestic L/C Issuer or the Foreign L/C Issuer any amount required to be paid by such Lender pursuant to the

foregoing provisions of this *Section 2.03(c)* by the time specified in *Section 2.03(c)(ii)*, the applicable L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the applicable L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect. A certificate of the applicable L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause *(vi)* shall be conclusive absent manifest error.

(d) *Repayment of Participations*.

(i) At any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's Domestic L/C Advance or Foreign L/C Advance, as applicable, in respect of such payment in accordance with *Section 2.03(c)*, (A) if the Administrative Agent receives for the account of the Domestic L/C Issuer any payment in respect of the related Domestic L/C Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Revolving Commitment Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's Domestic L/C Advance was outstanding) in Dollars or in the same currency as those received by the Administrative Agent and (B) if the Foreign L/C Issuer (or the Administrative Agent) receives any payment in respect of the related Foreign L/C Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto), the Foreign L/C Issuer (through Administrative Agent) or the Administrative Agent, if the funds were received by it, will distribute to such Lender its Revolving Commitment Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's Foreign L/C Advance was outstanding) in the Alternative Currency in which the Letter of Credit had been denominated or in the same currency as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable L/C Issuer pursuant to *Section 2.03(c)(i)* is required to be returned under any of the circumstances described in *Section 11.05* (including pursuant to any settlement entered into by the applicable L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of the applicable L/C Issuer its Revolving Commitment Percentage thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Credit Agreement.

(e) *Obligations Absolute*. The obligation of the Borrowers to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and to repay each Domestic L/C Borrowing or Foreign L/C Borrowing, as applicable, shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Credit Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Credit Agreement or any other Credit Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrowers or any of their Subsidiaries may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the applicable L/C Issuer or any other Person, whether in connection with this Credit Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such 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; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the applicable L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any adverse change in the relevant exchange rates or in the availability of the relevant currency to the Borrowers or any of their Subsidiaries or in the relevant currency markets generally; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrowers or any of their Subsidiaries.

The Borrowers shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to the Borrowers and, in the event of any claim of noncompliance with the Borrowers' instructions or other irregularity, the Borrowers will immediately notify the applicable L/C Issuer. The Borrowers shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) *Role of the L/C Issuers in such Capacity*. Each Lender and the Borrowers agrees that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of an L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Domestic Issuer Document or Foreign Issuer Document, as applicable. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to such Borrowers' use of any Letter of Credit; *provided*, however, that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as the Borrowers may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of an L/C Issuer, shall be liable or responsible for any of the matters described in clauses *(i)* through *(v)* of *Section 2.03(e)*; *provided*, however, that anything in such clauses to the contrary notwithstanding, the Borrowers may have a claim against the applicable L/C Issuer, and the applicable L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrowers that such Borrowers prove were caused by the applicable L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the applicable L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the applicable L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason.

(g) *Cash Collateral*. (i) Upon the request of the Administrative Agent, (A) if an L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in a Domestic L/C Borrowing or Foreign L/C Borrowing, as applicable, or (B) if, as of the Domestic L/C Expiration Date or Foreign L/C Expiration Date, as applicable, any Domestic L/C Obligation or Foreign L/C Obligation for any reason remains outstanding, the Domestic Borrowers or the Foreign Borrowers, respectively, shall, in each case,

immediately Cash Collateralize the then-Outstanding Amount of its Domestic L/C Obligations or Foreign L/C Obligations, as applicable; (ii) if the Administrative Agent notifies the Borrowers at any time that the Outstanding Amount of all Domestic L/C Obligations or Foreign L/C Obligations, as applicable, at such time exceeds 105% of the Domestic Letter of Credit Sublimit, with respect to Domestic Letters of Credit, or 105% of the Foreign Letter of Credit Sublimit then in effect, then, within two Business Days after receipt of such notice, the Domestic Borrowers or the Foreign Borrowers, respectively, shall Cash Collateralize the Domestic L/C Obligations or Foreign L/C Obligations, as applicable, in an amount equal to the amount by which the Outstanding Amount of all Domestic L/C Obligations or Foreign L/C Obligations, as applicable exceeds the Domestic L/C Sublimit or Foreign L/C Sublimit, as applicable; (iii) the Administrative Agent may, at any time and from time to time after the initial deposit of Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of exchange rate fluctuations and (iv) *Sections 2.06* and *9.02(c)* set forth certain additional requirements to deliver Cash Collateral hereunder. "*Cash Collateralize*" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the applicable L/C Issuer and the Lenders, as collateral for the Domestic L/C Obligations or Foreign L/C Obligations, as applicable, cash or deposit account balances ("*Cash Collateral*") pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Domestic L/C Issuer or Foreign L/C Issuer, as applicable (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. The Domestic Borrowers hereby grant to the Administrative Agent, for the benefit of the Domestic L/C Issuers and the Domestic Revolving Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. The Foreign Borrowers hereby grant to the Administrative Agent, for the benefit of the Foreign L/C Issuers and the Foreign Revolving Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America.

(h) *Applicability of ISP and UCP*. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrowers when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance, shall apply to each commercial Letter of Credit.

(i) *Letters of Credit Issued for Subsidiaries*. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, any Subsidiary of the Borrowers, the Borrowers shall be obligated to reimburse the applicable L/C Issuer for any and all drawings under such Letter of Credit. The Borrowers hereby acknowledges that the issuance of Letters of Credit for the account of any Borrower's Subsidiaries inures to the benefit of the Borrowers, and that the Borrowers' businesses derive substantial benefits from the businesses of such Subsidiaries.

(j) *Letter of Credit Fees*. The Borrowers shall pay Letter of Credit fees as set forth in *Section 2.09(b)*.

(k) *Conflict with Issuer Documents*. In the event of any conflict between the terms hereof and the terms of any Domestic Issuer Document or Foreign Issuer Documents, as applicable, the terms hereof shall control.

2.04 *Additional Provisions with respect to Swingline Loans*.

(a) *Borrowing Procedures*.

(i) *Domestic Swingline Loans*. Each Domestic Swingline Borrowing shall be made in Dollars upon the Borrowers' irrevocable notice to the Domestic Swingline Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Domestic Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (A) the amount to be borrowed, which shall be a minimum of $100,000, and (B) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Domestic Swingline Lender and the Administrative Agent of a written Loan Notice, appropriately

completed and signed by a Responsible Officer of a Domestic Borrower. Promptly after receipt by the Domestic Swingline Lender of any telephonic Loan Notice, the Domestic Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Loan Notice and, if not, the Domestic Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Domestic Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Domestic Swingline Borrowing (1) directing the Domestic Swingline Lender not to make such Domestic Swingline Loan as a result of the limitations set forth in this *Article II*, or (2) that one or more of the applicable conditions specified in *Article V* is not then satisfied, then, subject to the terms and conditions hereof, the Domestic Swingline Lender will, not later than 3:00 p.m. on the borrowing date specified in such Loan Notice, make the amount of its Domestic Swingline Loan available to the Borrowers at its office by crediting the account of the Domestic Borrowers on the books of the Domestic Swingline Lender in immediately available funds.

(ii) *Foreign Swingline Loans*. Each Foreign Swingline Borrowing shall be made in Dollars and Alternative Currencies upon the Foreign Borrower's irrevocable notice to the Foreign Swingline Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Foreign Swingline Lender and the Administrative Agent not later than 12:00 noon (Copenhagen time) on the requested borrowing date, and shall specify (A) the currency and amount to be borrowed, which shall be a minimum of the Dollar Equivalent of $100,000, and (B) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Foreign Swingline Lender and the Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Officer of a Foreign Borrower. Promptly after receipt by the Foreign Swingline Lender of any telephonic Loan Notice, the Foreign Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Loan Notice and, if not, the Foreign Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Foreign Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Foreign Revolving Lender) prior to 1:00 p.m. (Copenhagen time) on the date of the proposed Foreign Swingline Borrowing (1) directing the Foreign Swingline Lender not to make such Foreign Swingline Loan as a result of the limitations set forth in this *Article II*, or (2) that one or more of the applicable conditions specified in *Article V* is not then satisfied, then, subject to the terms and conditions hereof, the Foreign Swingline Lender will, not later than 2:30 p.m. (Copenhagen time) on the borrowing date specified in such Loan Notice, make the amount of its Foreign Swingline Loan available to the Borrowers at its office by crediting the account of the Foreign Borrowers on the books of the Foreign Swingline Lender in immediately available funds.

(b) *Refinancing*.

(i) The applicable Swingline Lender at any time in its sole and absolute discretion may request, on behalf of the Borrowers (which hereby irrevocably authorizes each Swingline Lender to so request on its behalf), that (A) each Domestic Revolving Lender make a Domestic Revolving Loan that is a Base Rate Loan in an amount equal to such Lender's Domestic Revolving Commitment Percentage of Domestic Swingline Loans then outstanding and (B) each Foreign Revolving Lender make a Foreign Revolving Loan that is a Eurocurrency Rate Loan in an amount equal to such Lender's Foreign Revolving Commitment Percentage of Foreign Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of *Section 2.02*, without regard to the minimum and multiples specified therein for the principal amount of Loans, the unutilized portion of the Aggregate Domestic Revolving Commitments or Aggregate Foreign Revolving Commitments, as applicable, or the conditions set forth in *Section 5.02*. The applicable Swingline Lender shall furnish the Borrowers with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Domestic Revolving Lender shall make an amount equal to its Domestic Revolving Commitment Percentage of the amount specified in such Loan Notice available to the Administrative Agent in Same Day Funds for the account of the Domestic

Swingline Lender at the Administrative Agent's Office for Dollar-denominated payments not later than 1:00 p.m. on the day specified in such Loan Notice, whereupon, subject to *Section 2.04(b)(ii)*, each Domestic Revolving Lender that so makes funds available shall be deemed to have made a Domestic Revolving Loan that is a Base Rate Loan to the Domestic Borrowers in such amount. In such case, the Administrative Agent shall remit the funds so received to the Domestic Swingline Lender. Each Foreign Revolving Lender shall make an amount equal to its Foreign Revolving Commitment Percentage of the currency and amount specified in such Loan Notice available to the Foreign Swingline Lender in Same Day Funds for the account of the Foreign Swingline Lender not later than 12:00 noon (Copenhagen time) on the day specified in such Loan Notice, whereupon, subject to *Section 2.04(b)(ii)*, each Foreign Revolving Lender that so makes funds available shall be deemed to have made a Foreign Revolving Loan that is a Eurocurrency Rate Loan to the Foreign Borrowers in such amount.

(ii) If for any reason any Swingline Loan cannot be refinanced by such a Borrowing of Revolving Loans in accordance with *Section 2.04(b)(i)*, the request for Revolving Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Lenders fund its risk participation in the relevant Swingline Loan and each Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to *Section 2.04(b)(i)* shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this *Section 2.04(b)* by the applicable time specified in *Section 2.04(b)(i)*, the Swingline Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the applicable Swingline Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect. A certificate of the applicable Swingline Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this *clause (iii)* shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this *Section 2.04(b)* shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right that such Lender may have against the applicable Swingline Lender, the applicable Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or Event of Default, (C) non-compliance with the conditions set forth in *Section 5.02*, or (D) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that the Swingline Lender has complied with the provisions of *Section 2.04(a)*. No such purchase or funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swingline Loans, together with interest as provided herein.

(c) *Repayment of Participations*.

(i) At any time after any Lender has purchased and funded a risk participation in a Swingline Loan, if the applicable Swingline Lender receives any payment on account of such Swingline Loan, such Swingline Lender will distribute to such Lender its Revolving Commitment Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by such Swingline Lender.

(ii) If any payment received by a Swingline Lender in respect of principal or interest on any Swingline Loan is required to be returned by such Swingline Lender under any of the circumstances described in *Section 11.05* (including pursuant to any settlement entered into by such Swingline Lender in its discretion), each Lender shall pay to such Swingline Lender its Revolving Commitment Percentage thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make

such demand upon the request of such Swingline Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Credit Agreement.

(d) *Interest for Account of Swingline Lenders*. Each Swingline Lender shall be responsible for invoicing the applicable Borrowers for interest on the Swingline Loans. Until each Lender funds its Revolving Loan or risk participation pursuant to this *Section 2.04* to refinance such Lender's Revolving Commitment Percentage of any Swingline Loan, interest in respect thereof shall be solely for the account of the applicable Swingline Lender.

(e) *Payments Directly to Swingline Lenders*. (i) The Domestic Borrowers shall make all payments of principal and interest in respect of the Domestic Swingline Loans, directly to the Domestic Swingline Lender and (ii) the Foreign Borrowers shall make payments of principal and interest in respect of the Foreign Swingline Loans, directly to the Foreign Swingline Lender.

(f) *Overdraft Facility*. The parties hereto acknowledge that the Foreign Swingline Lender may from time to time make loans to the Foreign Borrowers pursuant to an overdraft, autoborrow or similar arrangement (the "*Overdraft Facility*") in an amount not to exceed $20,000,000. The loans made pursuant to the Overdraft Facility (the "*Overdraft Advances*") shall be deemed Foreign Swingline Loans for all purposes hereof and shall be subject to all of the provisions hereto; *provided* that (i) the borrowing procedures set forth in the Overdraft Documents shall prevail in the event of any conflict between such borrowing procedures and *Section 2.04(a)(ii)*; (ii) the optional prepayment provisions set forth in the Overdraft Documents shall prevail in the event of any conflict between such provisions and *Section 2.06(a)*; (iii) any mandatory prepayment provisions set forth in the Overdraft Documents shall be in addition to, and not in lieu of or replacement of, the mandatory prepayment provisions set forth in *Section 2.05*; and (iv) interest on each Overdraft Advance shall be due and payable in arrears on each date set forth in the Overdraft Documents in the event of any conflict between such interest payment dates and the interest payment dates set forth herein.

2.05 *Repayment of Loans*.

(a) *Revolving Loans*. The Outstanding Amount of Revolving Loans shall be repaid in full on the Revolving Termination Date.

(b) *Swingline Loans*. The Outstanding Amount of the Swingline Loans shall be repaid in full on the earlier to occur of (i) the date of demand by the applicable Swingline Lender and (ii) the Revolving Termination Date.

(c) *Foreign Term Loan*. The Outstanding Amount of the Foreign Term Loan shall be repaid in nineteen (19) consecutive equal quarterly installments as follows: (i) the first eighteen (18) installments will be due on each March 31, June 30, September 30 and December 31, beginning March 31, 2006 and through June 30, 2010 and (ii) the nineteenth (19th) and final installment will be due on October 18, 2010.

2.06 *Prepayments*.

(a) *Voluntary Prepayments*. The Loans may be repaid in whole or in part without premium or penalty (except, in the case of Loans other than Base Rate Loans, amounts payable pursuant to *Section 3.05*); *provided* that:

(i) in the case of Loans other than Swingline Loans, (A) notice thereof must be received by 11:00 a.m. by the Administrative Agent at least three Business Days prior to the date of prepayment, in the case of Eurocurrency Rate Loans denominated in Dollars, (B) four Business Days prior to any date of prepayment, in the case of Eurocurrency Rate Loans denominated in Alternative Currencies, and (C) on the date of prepayment, in the case of Base Rate Loans, and in each case, any such prepayment shall be a minimum principal amount of $5 million and integral multiples of $1 million in excess thereof, in the case of Eurocurrency Rate Loans and $500,000 and integral multiples of $100,000 in excess thereof, in the case of Base Rate Loans, or, in each case, the entire remaining principal amount thereof, if less;

(ii) in the case of Swingline Loans, (A) notice thereof must be received by the applicable Swingline Lender by (1) 1:00 p.m. on the date of prepayment (with a copy to the Administrative Agent), with respect to Domestic Swingline Loans and (2) 12:00 noon (Copenhagen time) on the date of prepayment (with a copy to the Administrative Agent), with respect to Foreign Swingline Loans and (B) any such prepayment shall be in the same minimum principal amounts as for advances thereof (or any lesser amount that may be acceptable to the applicable Swingline Lender); and

(iii) any voluntary prepayments on the Foreign Term Loans will be applied to remaining scheduled principal amortization installments as requested by the Foreign Borrowers.

Each such notice of voluntary prepayment hereunder shall be irrevocable and shall specify the date and amount of prepayment and the Loans and Type(s) of Loans that are being prepaid and, if Eurocurrency Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will give prompt notice to the applicable Lenders of any prepayment on the Loans and the Lender's interest therein. If such notice is given by the Borrowers, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Prepayments of Eurocurrency Rate Loans hereunder shall be accompanied by accrued interest on the amount prepaid and breakage or other amounts due, if any, under *Section 3.05*.

(b) *Mandatory Prepayments*.

(i) (A) *Domestic Revolving Commitments*. If at any time (i) the Outstanding Amount of Domestic Revolving Obligations shall exceed the Aggregate Domestic Revolving Committed Amount, (ii) the aggregate principal amount of Domestic Revolving Obligations owing by any Designated Borrower shall exceed its respective Designated Borrowing Limit, (iii) the Outstanding Amount of Domestic L/C Obligations shall exceed the Domestic L/C Sublimit, (iv) the Outstanding Amount of Domestic Swingline Loans shall exceed the Domestic Swingline Sublimit, immediate prepayment will be made on or in respect of the Domestic Revolving Obligations in an amount equal to such excess; *provided*, however, that, except with respect to *clause (iii)*, Domestic L/C Obligations will not be Cash Collateralized hereunder until the Domestic Revolving Loans and Domestic Swingline Loans have been paid in full.

(B) *Foreign Revolving Commitments*. If at any time (i) the Outstanding Amount of Foreign Revolving Obligations shall exceed the Aggregate Foreign Revolving Committed Amount, (ii) the aggregate principal amount of Foreign Revolving Obligations owing by any Designated Borrower shall exceed its respective Designated Borrowing Limit, (iii) the Outstanding Amount of Foreign L/C Obligations shall exceed the Foreign L/C Sublimit, (iv) the Outstanding Amount of Foreign Swingline Loans shall exceed the Foreign Swingline Sublimit, immediate prepayment will be made on or in respect of the Foreign Revolving Obligations in an amount equal to such excess; *provided*, however, that, except with respect to *clause (iii)*, Foreign L/C Obligations will not be Cash Collateralized hereunder until the Foreign Revolving Loans and Foreign Swingline Loans have been paid in full.

(ii) *Dispositions and Involuntary Dispositions*. Prepayment will be made on the Loan Obligations on the Business Day following receipt of Net Cash Proceeds required to be prepaid pursuant to the provisions hereof in an amount equal to 100% of the Net Cash Proceeds received from any Disposition or Involuntary Disposition by any member of the Consolidated Group, to the extent (A) such proceeds are not reinvested in assets useful in the business of a member of the Consolidated Group within twelve months of the date of such Disposition or Involuntary Disposition and (B) the aggregate amount of such proceeds that are not reinvested in accordance with clause *(A)* hereof exceeds $10 million in any fiscal year.

(iii) *Equity Transactions*. Prepayment will be made on the Loan Obligations in an amount equal to 50% of the Net Cash Proceeds from any Equity Transactions on the Business Day following receipt thereof.

(c) *Application*. Within each Loan, prepayments will be applied first to Base Rate Loans, then to Eurocurrency Rate Loans in direct order of Interest Period maturities. In addition:

(i) *Voluntary Prepayments*. Voluntary prepayments shall be applied as specified by the Borrowers. Voluntary prepayments on the Loan Obligations will be paid by the Administrative Agent to the Lenders ratably in accordance with their respective interests therein. Voluntary prepayments on the Foreign Term Loan may not be reborrowed.

(ii) *Mandatory Prepayments*. Mandatory prepayments on the Loan Obligations will be paid by the Administrative Agent to the Lenders ratably in accordance with their respective interests therein; *provided* that:

(A) (1) Mandatory prepayments in respect of the Domestic Revolving Commitments under subsection *(b)(i)(A)* above shall be applied to the respective Domestic Revolving Obligations as appropriate.

(2) Mandatory prepayments in respect of the Foreign Revolving Commitments under subsection *(b)(i)(B)* above shall be applied to the respective Foreign Revolving Obligations as appropriate.

(B) Mandatory prepayments in respect of Dispositions and Involuntary Dispositions under *subsection (b)(ii)* above shall be applied, (1) if the assets subject to a prepayment resulting from a Disposition or Involuntary Disposition were owned by a Foreign Subsidiary *first*, to the Foreign Term Loan, ratably to scheduled remaining principal amortization installments thereunder until paid in full, *second*, to outstanding Foreign Revolving Loans as selected by the Foreign Borrowers, and *third* to Cash Collateralize outstanding Foreign Letters of Credit and (2) if the assets subject to a prepayment resulting from a Disposition or Involuntary Disposition were owned by a Domestic Subsidiary, to the Domestic Revolving Obligations, *first*, to the Domestic Revolving Loans and, *second*, to Cash Collateralize outstanding Domestic Letters of Credit.

(C) Mandatory prepayments in respect of Equity Transactions under *subsection (b)(iii)* above shall be applied ratably, subject to *Section 1.10*, to outstanding Domestic Revolving Loans, Foreign Revolving Loans and the Foreign Term Loan. Mandatory prepayments applied to the Revolving Loans shall be to Loans as selected by the Borrowers, and mandatory prepayments applied to the Foreign Term Loan shall be applied ratably to remaining scheduled principal amortization installments.

2.07 ***Termination or Reduction of Commitments*****.**

(a) *Voluntary Reductions*. The Aggregate Commitments hereunder may be permanently reduced in whole or in part by notice from the Borrowers to the Administrative Agent; *provided* that (i) any such notice thereof must be received by 11:00 a.m. at least five Business Days prior to the date of reduction or termination and any such prepayment shall be in a minimum principal amount of $10 million and integral multiples of $1 million in excess thereof; (ii) none of the Aggregate Commitments may be reduced to an amount less than the Loan Obligations then outstanding thereunder and (iii) if, after giving effect to any reduction of any of the Aggregate Commitments, the Domestic L/C Sublimit, the Foreign L/C Sublimit, the Designated Borrower Limit, the Domestic Swingline Sublimit or the Foreign Swingline Sublimit exceeds the amount of applicable Aggregate Commitments, such sublimit shall be automatically reduced by the amount of such excess. The Administrative Agent will give prompt notice to the Lenders of any such reduction in the Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Revolving Commitment Percentage or Foreign Term Loan Commitment Percentage, as applicable. All commitment or other fees accrued with respect thereto through the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

(b) *Mandatory Reductions*. The Aggregate Domestic Revolving Committed Amount and Aggregate Foreign Revolving Committed Amount, respectively shall be permanently reduced in an amount equal to mandatory prepayments applied to the Revolving Obligations in respect of Dispositions and Involuntary Dispositions under

Section 2.06(b)(ii). The Aggregate Domestic Revolving Committed Amount and the Aggregate Foreign Revolving Committed Amount shall not be permanently reduced upon application of mandatory prepayments to the Revolving Obligations in respect of Revolving Commitments under *Section 2.06(b)(i)* or Equity Transactions under *Section 2.06(b)(iii)*.

2.08 *Interest.*

(a) Subject to the provisions of *subsection (b)* below, (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period *plus* the Applicable Percentage *plus* (in the case of a Eurocurrency Rate Loan of any Lender which is lent from a Lending Office in the United Kingdom or a Participating Member State) the Mandatory Cost; (ii) each Loan that is a Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate *plus* the Applicable Percentage; (iii) each Domestic Swingline Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate *plus* the Applicable Percentage and (iv) each Foreign Swingline Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Eurocurrency Rate *plus* the Applicable Percentage.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Law.

(ii) If any amount (other than principal of any Loan) payable by the Borrowers under any Credit Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Law.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrowers shall at the request of the Required Lenders, pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Law.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 *Fees.*

(a) *Facility Fees*.

(i) *Domestic Revolving Commitment*. The Domestic Borrowers shall pay to the Administrative Agent for the account of each Domestic Revolving Lender in accordance with its Domestic Revolving Commitment Percentage, a facility fee, in Dollars, equal to the Applicable Percentage of the actual daily amount of the Aggregate Domestic Revolving Commitments (or, if the Aggregate Domestic Revolving Commitments have terminated, on the Outstanding Amount of all Domestic Revolving Loans, Domestic Swingline Loans and Domestic L/C Obligations), regardless of usage.

(ii) *Foreign Revolving Commitment*. The Foreign Borrowers shall pay to the Administrative Agent for the account of each Foreign Revolving Lender in accordance with its Foreign Revolving Commitment Percentage, a facility fee, in Dollars, equal to the Applicable Percentage of the actual daily amount of the

Aggregate Foreign Revolving Commitments (or, if the Aggregate Foreign Revolving Commitments have terminated, on the Outstanding Amount of all Foreign Revolving Loans, Foreign Swingline Loans and Foreign L/C Obligations), regardless of usage.

(iii) *Foreign Term Loan Commitment*. The Foreign Borrowers for the Foreign Term Loan shall pay to the Administrative Agent for the account of each Foreign Term Lender in accordance with its Foreign Term Loan Commitment Percentage, a facility fee, in Dollars, equal to the Applicable Percentage of the aggregate principal amount of the Foreign Term Loan, whether or not then drawn.

(iv) *Payments*. The foregoing facility fees shall accrue at all times during the Commitment Period (and thereafter so long as any Revolving Loans, Swingline Loans, L/C Obligations or Foreign Term Loans remain outstanding), including at any time during which one or more of the conditions in *Article V* is not met, and shall be due and payable quarterly in arrears on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the Closing Date, on the Revolving Termination Date, on the date of the final payment of principal on the Foreign Term Loan (and, if applicable, thereafter on demand). The facility fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Percentage during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Percentage separately for each period during such quarter that such Applicable Percentage was in effect.

(b) *Commercial and Standby Letter of Credit Fees.*

(i) *Domestic Letter of Credit Fees*. The Domestic Borrowers shall pay to the Administrative Agent for the account of each Domestic Revolving Lender in accordance with its Domestic Revolving Commitment Percentage, in Dollars, (A) a Domestic Letter of Credit fee for each commercial Domestic Letter of Credit equal to 1/8th of 1% per annum multiplied by the Dollar Equivalent of the actual daily maximum amount available to be drawn under such Domestic Letter of Credit (whether or not such maximum amount is then in effect under such Domestic Letter of Credit) and (B) a Domestic Letter of Credit fee for each standby Domestic Letter of Credit equal to the Applicable Percentage *multiplied* by the Dollar Equivalent of the actual daily maximum amount available to be drawn under such Domestic Letter of Credit (whether or not such maximum amount is then in effect under such Domestic Letter of Credit) (collectively, the "*Domestic Letter of Credit Fees*"). The Domestic Letter of Credit Fees shall be computed on a quarterly basis in arrears, and shall be due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Domestic Letter of Credit, on the Domestic L/C Expiration Date and thereafter on demand. If there is any change in the Applicable Percentage during any quarter, the daily maximum amount of each standby Domestic Letter of Credit shall be computed and multiplied by the Applicable Percentage separately for each period during such quarter that such Applicable Percentage was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Domestic Revolving Lenders, while any Event of Default exists, all Domestic Letter of Credit Fees shall accrue at the Default Rate.

(ii) *Domestic Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers*. The Domestic Borrowers shall pay directly to the Domestic L/C Issuer for its own account, in Dollars (or other currency accepted by the Domestic L/C Issuer in its sole discretion), a fronting fee (A) with respect to each standby Domestic Letter of Credit at the rate and at the times specified in the applicable Fee Letter or as otherwise agreed between the Domestic Borrowers and the Domestic L/C Issuer, (B) with respect to any amendment of a commercial Domestic Letter of Credit increasing the amount of such Domestic Letter of Credit, a rate separately agreed between the applicable Domestic Borrower and the Domestic L/C Issuer and (C) with respect to each commercial Domestic Letter of Credit, at the rate and times agreed by the applicable Domestic Borrower and the Domestic L/C Issuer at the time of issuance. In addition, the Domestic Borrowers shall pay directly to each Domestic L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the Domestic L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(iii) *Foreign Letter of Credit Fees*. The Foreign Borrowers shall pay to the Administrative Agent for the account of each Foreign Revolving Lender in accordance with its Foreign Revolving Commitment Percentage, in Dollars, (A) a Foreign Letter of Credit fee for each commercial Foreign Letter of Credit equal to 1/8th of 1% per annum multiplied by the Dollar Equivalent of the actual daily maximum amount available to be drawn under such Foreign Letter of Credit (whether or not such maximum amount is then in effect under such Foreign Letter of Credit) and (B) a Foreign Letter of Credit fee for each standby Foreign Letter of Credit equal to the Applicable Percentage *multiplied* by the Dollar Equivalent of the actual daily maximum amount available to be drawn under such Foreign Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit) (collectively, the "*Foreign Letter of Credit Fees*"). The Foreign Letter of Credit Fees shall be computed on a quarterly basis in arrears, and shall be due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Foreign Letter of Credit, on the Foreign L/C Expiration Date and thereafter on demand. If there is any change in the Applicable Percentage during any quarter, the daily maximum amount of each standby Foreign Letter of Credit shall be computed and multiplied by the Applicable Percentage separately for each period during such quarter that such Applicable Percentage was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Foreign Revolving Lenders, while any Event of Default exists, all Foreign Letter of Credit Fees shall accrue at the Default Rate.

(iv) *Foreign Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers*. The Foreign Borrowers shall pay directly to the Foreign L/C Issuer for its own account, in Dollars (or other currency accepted by the Foreign L/C Issuer in its sole discretion), a fronting fee (A) with respect to each standby Foreign Letter of Credit at the rate and at the times specified in the applicable Fee Letter or as otherwise agreed between the Foreign Borrowers and the Foreign L/C Issuer, (B) with respect to any amendment of a commercial Foreign Letter of Credit increasing the amount of such Foreign Letter of Credit, a rate separately agreed between the Foreign Borrower and the Foreign L/C Issuer and (C) with respect to each commercial Foreign Letter of Credit, at the rate and times agreed by the applicable Foreign Borrower and the Foreign L/C Issuer at the time of issuance. In addition, the Foreign Borrowers shall pay directly to each Foreign L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the Foreign L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(c) *Other Fees*.

(i) The Borrowers shall pay to the Arranger and the Administrative Agent for their own respective accounts, in Dollars, fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrowers shall pay to the Lenders, in Dollars, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 *Computation of Interest and Fees*.

All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America's prime rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year), or, in the case of interest in respect of Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made shall, subject to *Section 2.11(a)*, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 ***Payments Generally; Administrative Agent's Clawback*.**

(a) *General*. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Loans denominated in an Alternative Currency, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder with respect to principal and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. All payments by the applicable Borrowers of principal of and interest on Foreign Revolving Loans shall be made to Nordea, which shall promptly inform, in writing, the Administrative Agent of the date, time and amount of such payments, along with any other information regarding such payments as requested by the Administrative Agent. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Credit Agreement be made in the United States. If, for any reason, the Borrowers are prohibited by any Law from making any required payment hereunder in an Alternative Currency, the Borrowers shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Lender its pro rata share of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 2:00 p.m., in the case of payments in Dollars, or (ii) after the Applicable Time specified by the Administrative Agent in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Subject to the definition of "Interest Period", if any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be. If Nordea ceases to hold any Foreign Revolving Commitments, then (i) the provisions set forth in this Section that are applicable to Nordea shall cease to apply to Nordea and (ii) the Foreign Borrowers shall select another Foreign Revolving Lender to serve in the place of Nordea with respect to the provisions in this Section; *provided* that such Foreign Revolving Lender (A) agrees to perform such obligations and (B) is acceptable to the Administrative Agent.

(b) (i) *Funding by Lenders; Presumption by Administrative Agent*. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with *Section 2.02* (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by *Section 2.02*) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) *Payments by Borrowers; Presumptions by Administrative Agent*. Unless the Administrative Agent shall have received notice from the Borrowers prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuers hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuers, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or each of the L/C Issuers, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or L/C Issuer, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrowers with respect to any amount owing under this subsection *(b)* shall be conclusive, absent manifest error.

(c) *Failure to Satisfy Conditions Precedent*. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this *Article II*, and such funds are not made available to the Borrowers by the Administrative Agent because the conditions to the applicable Credit Extension set forth in *Article V* are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) *Obligation of the Lenders Several*. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to *Section 11.04(c)* are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under *Section 11.04(c)* on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under *Section 11.04(c)*.

(e) *Funding Source*. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) *Allocation of Funds*. If at any time insufficient funds are received by or are available to the Administrative Agent to pay fully all amounts of principal, Domestic L/C Borrowings, Foreign L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) *first*, toward costs and expenses (including all reasonable fees, expenses and disbursements of any law firm or other counsel and amounts payable under *Article III*) incurred by the Administrative Agent and each Lender, (ii) *second*, toward repayment 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 (iii) *third*, toward repayment of principal, Domestic L/C Borrowings and Foreign L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal, Domestic L/C Borrowings and Foreign L/C Borrowings then due to such parties.

2.12 *Sharing of Payments By Lenders*.

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, or the participations in L/C Obligations or in Swingline Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in (i) Domestic L/C Obligations and Domestic Swingline Loans of the other Lenders, if such Lender is a Domestic Revolving Lender or (ii) Foreign L/C Obligations and Foreign L/C Swingline Loans, if such Lender is a Foreign Revolving Lender, or make such other adjustments among the group of Domestic Revolving Lenders or Foreign Revolving Lenders, as applicable, or as

shall be equitable, so that the benefit of all such payments shall be shared by the Domestic Revolving Lenders or Foreign Revolving Lenders, as applicable, ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, *provided* that:

(1) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(2) the provisions of this Section shall not be construed to apply to (x) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Credit Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swingline Loans to any assignee or participant, other than to the Borrowers or any of their Subsidiaries (as to which the provisions of this Section shall apply).

Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation.

2.13 ***Evidence of Debt.***

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to the Administrative Agent a Note for such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection *(a)*, each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.14 ***Designated Borrowers.***

(a) Effective as of the date hereof, each Subsidiary set forth on *Schedule 2.14* shall be a "Designated Borrower" hereunder and may receive Loans for its account on the terms and conditions set forth in this Credit Agreement.

(b) The Borrowers may at any time, upon not less than 15 Business Days' notice from the Borrowers to the Administrative Agent (or such shorter period as may be agreed by the Administrative Agent in its sole discretion), designate any additional Subsidiary (an "*Applicant Borrower*") as a Designated Borrower to receive Loans hereunder by delivering to the Administrative Agent (which shall promptly deliver counterparts thereof to each Lender) a duly executed notice and agreement in substantially the form of *Exhibit 2.14-1* (a "*Designated Borrower Request and Assumption Agreement*"). The parties hereto acknowledge and agree that prior to any Applicant

Borrower becoming entitled to utilize the credit facilities provided for herein the Administrative Agent and the Lenders shall have received such supporting resolutions, incumbency certificates, opinions of counsel and other documents or information, in form, content and scope reasonably satisfactory to the Administrative Agent, as may be required by the Administrative Agent or the Required Lenders in their sole discretion, and Notes signed by such new Borrowers to the extent any Lenders so require. If the Administrative Agent and the Required Lenders agree that an Applicant Borrower shall be entitled to receive Loans hereunder, then promptly following receipt of all such requested resolutions, incumbency certificates, opinions of counsel and other documents or information, the Administrative Agent shall send a notice in substantially the form of *Exhibit 2.14-2* (a "*Designated Borrower Notice*") to the Borrowers and the Lenders specifying the effective date upon which the Applicant Borrower shall constitute a Designated Borrower for purposes hereof, whereupon each of the Lenders agrees to permit such Designated Borrower to receive Loans hereunder, on the terms and conditions set forth herein, and each of the parties agrees that such Designated Borrower otherwise shall be a Borrower for all purposes of this Agreement; *provided* that no Loan Notice or Letter of Credit Application may be submitted by or on behalf of such Designated Borrower until the date five Business Days after such effective date.

(c) The Obligations of the Domestic Borrowers and each Designated Borrower that is a Domestic Subsidiary shall be joint and several in nature. The Foreign Obligations of the Foreign Borrowers and each Designated Borrower that is a Foreign Subsidiary shall be several, and not joint and several, in nature.

(d) The Administrative Agent and the Lenders agree that upon delivery of the documentation provided for in this *Section 2.14* in a form satisfactory to the Administrative Agent and the European Collateral Agent, Newco may become a Designated Borrower hereunder without any further consent or vote of the Required Lenders.

(e) Each Subsidiary that is or becomes a "Designated Borrower" pursuant to this *Section 2.14* hereby irrevocably appoints (i) with respect to any requested Credit Extension of Domestic Revolving Loans, Domestic Swingline Loans or Domestic L/C Obligations, TPI as its agent and (ii) with respect to any requested Credit Extension of Foreign Revolving Loans, Foreign Swingline Loans or Foreign L/C Obligations, Dan-Foam, in each case for all purposes relevant to this Credit Agreement and each of the other Credit Documents, including (1) the giving and receipt of notices, (2) the execution and delivery of all documents, instruments and certificates contemplated herein and all modifications hereto, and (3) the receipt of the proceeds of any Loans made by the Lenders, to any such Designated Borrower hereunder. Any acknowledgment, consent, direction, certification or other action which might otherwise be valid or effective only if given or taken by all Borrowers, or by each Borrower acting singly, shall be valid and effective if given or taken only by the respective party set forth in *clauses (i)* and *(ii)* above, whether or not any such other Borrower joins therein. Any notice, demand, consent, acknowledgement, direction, certification or other communication delivered to such agent, as applicable, for the Designated Borrower in accordance with the terms of this Credit Agreement shall be deemed to have been delivered to each Designated Borrower.

(f) The Borrowers may from time to time, upon not less than 15 Business Days' notice from the Borrowers to the Administrative Agent (or such shorter period as may be agreed by the Administrative Agent in its sole discretion), terminate a Designated Borrower's status as such, *provided* that there are no outstanding Loans payable by such Designated Borrower, or other amounts payable by such Designated Borrower on account of any Loans made to it, as of the effective date of such termination. The Administrative Agent will promptly notify the Lenders of any such termination of a Designated Borrower's status.

2.15 *Joint and Several Liability*.

(a) *Domestic Borrowers*.

(i) Each Domestic Borrower accepts joint and several liability hereunder in consideration of the financial accommodation to be provided by the Administrative Agent and the Lenders under this Credit Agreement and the other Credit Documents, for the mutual benefit, directly and indirectly, of each Domestic Borrower and in consideration of the undertakings of each Domestic Borrower to accept joint and several liability for the obligations of each Domestic Borrower.

(ii) Each Domestic Borrower shall be jointly and severally liable for all Obligations (whether borrowed by a Domestic Borrower or by a Foreign Borrower), regardless of which Borrower actually receives Credit Extensions hereunder or the amount of such Credit Extensions received or the manner in which the Administrative Agent or any Lender accounts for such Credit Extensions on its books and records. Each Domestic Borrower's obligations with respect to Credit Extensions made to it, and each Domestic Borrower's obligations arising as a result of the joint and several liability of such Domestic Borrower hereunder, with respect to Credit Extensions made to and other Obligations owing by the other Borrowers hereunder, shall be separate and distinct obligations, but all such obligations shall be primary obligations of each Domestic Borrower.

(iii) Each Domestic Borrower's obligations arising as a result of the joint and several liability of such Domestic Borrower hereunder with respect to Credit Extensions made to and other Obligations owing by the other Borrowers hereunder shall, to the fullest extent permitted by law, be unconditional irrespective of (A) the validity or enforceability, avoidance or subordination of the obligations of any other Borrower or of any promissory note or other document evidencing all or any part of the obligations of any other Borrower, (B) the absence of any attempt to collect the Obligations from any other Borrower, any other guarantor, or any other security therefor, or the absence of any other action to enforce the same, (C) the waiver, consent, extension, forbearance or granting of any indulgence by the Administrative Agent or any Lender with respect to any provision of any instrument evidencing the obligations of any other Borrower, or any part thereof, or any other agreement now or hereafter executed by any other Borrower and delivered to the Administrative Agent or any Lender, (D) the failure by the Administrative Agent or any Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the obligations of any other Borrower, (E) the Administrative Agent's or any Lender's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, (F) any borrowing or grant of a security interest by any other Borrower, as Debtor In Possession under Section 364 of the Bankruptcy Code, (G) the disallowance of all or any portion of the Administrative Agent's or any Lender's claim(s) for the repayment of the obligations of any other Borrower under Section 502 of the Bankruptcy Code, or (H) any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor or of any other Borrower. With respect to each Domestic Borrower's obligations arising as a result of the joint and several liability of such Domestic Borrower hereunder with respect to Credit Extensions made to the other Borrowers hereunder, such Domestic Borrower waives, until the Obligations shall have been paid in full and this Credit Agreement and the other Credit Documents shall have been terminated, any right to enforce any right of subrogation or any remedy which the Administrative Agent or any Lender now has or may hereafter have against such Domestic Borrower, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to the Administrative Agent or any Lender to secure payment of the Obligations or any other liability of any Borrower to the Administrative Agent or any Lender.

(iv) Upon the occurrence and during the continuation of any Event of Default, the Administrative Agent and the Lenders may proceed directly and at once, without notice, against any Domestic Borrower to collect and recover the full amount, or any portion of the Obligations, without first proceeding against any other Borrower or any other Person, or against any security or collateral for the Obligations. Each Domestic Borrower consents and agrees that the Administrative Agent and the Lenders shall be under no obligation to marshal any assets in favor of any Borrower or against or in payment of any or all of the Obligations.

(b) *Foreign Borrowers*. The obligations of the Foreign Borrowers under this Credit Agreement and the other Credit Documents shall be several, and not joint, in nature (except as provided in *Article IV*) and shall be limited to the Foreign Obligations, *provided* that the Foreign Borrowers expressly waive any requirement that the Administrative Agent or any holder of the Foreign Obligations, or any of their officers, agents or representatives, exhaust any right, power or remedy or first proceed under any of the Credit Documents or against any other Credit Party, any other Person or any Collateral with respect to the Foreign Obligations.

2.16 ***Special Provisions Relating to the Albuquerque IRB Financing and the Albuquerque Bonds*.**

(a) *Pledge of Bank Bonds*. The Domestic Borrowers hereby pledge, assign, hypothecate and transfer to the Domestic Collateral Agent all their respective rights, title and interest to, and hereby grants to the Domestic Collateral Agent a first lien on, and security interest in, all right, title and interest of the Domestic Borrowers in and to the following (the "*Bank Bond Collateral*"):

(i) all Albuquerque Series 2005A Bonds which may from time to time have been purchased with proceeds of drawings under the Letter of Credit (the "*Bank Bonds*");

(ii) all income, earnings, profits, interest, premium or other payments in whatever form in respect of the Bank Bonds;

(iii) all proceeds (cash and non-cash) arising out of the sale, exchange, collection, enforcement or other disposition of all or any portion of the Bank Bonds;

as collateral security for the prompt and complete payment when due of all amounts due in respect of the Obligations.

The Bank Bonds shall be held by the Fiscal Agent pursuant to the provisions of Section 3.08(d)(ii) of the Albuquerque Bond Indenture.

After the occurrence of an Event of Default, the Domestic Collateral Agent, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon the Domestic Borrowers or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Bank Bond Collateral, or any part thereof, and/or may forthwith sell, assign, give option or options to purchase, contract to sell or otherwise dispose of and deliver such Bank Bond Collateral, or any part thereof, at public or private sale or sales, at any exchange, broker's board or at any of the Domestic Collateral Agent's offices or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk, with the right of the Domestic Collateral Agent or any of the Lenders upon any such sale or sales, public or private, to purchase the whole or any part of such Bank Bond Collateral so sold, free of any right or equity of redemption in the Domestic Borrowers, which right or equity is hereby expressly waived or released. The net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care or safekeeping of any and all of the Bank Bond Collateral or in any way relating to the rights of the Bank hereunder, including reasonable attorney's fees and legal expenses, will be applied to the payment in whole or in part of the Obligations in such order as the Administrative Agent may elect, the Domestic Borrowers remaining liable for any deficiency remaining unpaid after such application, and only after so applying such net proceeds and after the payment by the Domestic Collateral Agent of any other amount required by any provision of law, including, without limitation, Section 9-504(1) of the Uniform Commercial Code, need the Domestic Collateral Agent account for the surplus, if any, to the Domestic Borrowers. The Domestic Borrowers agrees that the Domestic Collateral Agent need not give more than ten (10) days' notice of the time and place of any public sale or of the time after which a private sale or other intended disposition is to take place and that such notice is reasonable notification of such matters. No notification need be given to the Domestic Borrowers if it has signed after default a statement renouncing or modifying any right to notification of sale or other intended disposition. In addition to the rights and remedies granted to it in this Credit Agreement and in any other instrument or agreement securing, evidencing or relating to any of the Obligations, the Administrative Agent, the Domestic Collateral Agent and the Lenders shall have all the rights and remedies of a secured party under the Uniform Commercial Code of the State of New Mexico except to the extent the remedial provisions of some other state laws are applicable.

The Domestic Borrowers covenants that the pledge, assignment and delivery of the Bank Bond Collateral hereunder will create a valid, perfected, first priority security interest in all right, title and interest of the Domestic Borrowers in or to such Bank Bond Collateral, and the proceeds thereof, subject to no prior pledge, lien, mortgage, hypothecation, security interest, charge, option or encumbrance or to any agreement purporting to

grant to any third party a security interest in the property or assets of the Domestic Borrowers which would include the Bank Bond Collateral. The Domestic Borrowers covenants and agrees that it will defend the Bank's right, title and security interest in and to the Bank Bond Collateral and the proceeds thereof against the claims and demands of all persons whomsoever.

The Bank Bonds shall be released from the security interest created hereunder upon satisfaction of the Obligations with respect to such Bank Bonds, and restoration of amounts drawn under the IRB Letter of Credit.

(b) *Notation by Fiscal Agent*. Bonds purchased with the proceeds of drawings on the IRB Letter of Credit which are held under a Book entry system shall be held by the Fiscal Agent in the name of the Domestic Collateral Agent with a notation that such Bonds are "Bank Bonds." The Bank Bonds shall be held by the Fiscal Agent as fiduciary for the Domestic Collateral Agent and shall secure the Obligations hereunder.

(c) *Optional Redemption of Albuquerque Bonds*. Except as required hereunder, TPUSA will not take or permit the Trustee under the Albuquerque Bond Indenture to take any action which would result in the optional redemption or prepayment of all or any portion of the Albuquerque Bonds with funds drawn under the IRB Letter of Credit, unless TPUSA has provided the Administrative Agent with notice of the desired redemption and made satisfactory arrangements with the Administrative Agent and the Domestic L/C Issuer to reimburse the Domestic L/C Issuer in full for the Optional Redemption Drawing under the IRB Letter of Credit necessary to effect such redemption by no later than the date on which the Trustee first sends notice thereof to the owners of the Albuquerque Bonds. Thereupon the Administrative Agent and/or the Domestic L/C Issuer shall notify the Trustee to begin redemption proceedings and to draw on the IRB Letter of Credit as required by the Albuquerque Bond Indenture. Notwithstanding the foregoing, TPUSA may not direct an optional redemption of the Albuquerque Bonds in connection with an insurance recovery or condemnation award with respect to any portion of the Project unless (i) such proceeds exceed the amount used to fully rebuild or restore the Albuquerque Project or (ii) TPUSA has first obtained the prior written consent of the Administrative Agent.

(d) *Self-Funded Bonds*. TPUSA will not take or permit the Trustee under the Albuquerque Bond Indenture to take any action which would result in the optional redemption or prepayment of all or any portion of the Self- Funded Bonds prior to October 1, 2035 or grant any Lien to secure the Self-Funded Bonds; *provided*, *however*, that at any time prior to the occurrence of an Event of Default, TPUSA may effect a redemption of Self-Funded Bonds in an aggregate principal amount not greater than one-third (1/3) of the aggregate principal amount of Albuquerque Bonds which have been redeemed as of such date. TPUSA will not modify, terminate or waive any agreement which subordinates the Self-Funded Bonds to the TPUSA's obligations under this Credit Agreement and/or the other Credit Documents. Except as provided in the first sentence of this subsection, TPUSA will not make any direct or indirect payment with respect to the Self-Funded Bonds in violation of any such subordination agreement.

(e) *Redemption of the Albuquerque Series 2005A Bonds*. Unless the Administrative Agent and the Required Lenders shall otherwise direct, redemption will be made of the Albuquerque Series 2005A Bonds in 39 quarterly installments (with the first 38 installments each in the amount of $1,920,000 and the final installment in the amount of $2,040,000) beginning with the quarter ending March 31, 2006; provided, however, in the event that on the last day of any fiscal quarter for which a scheduled redemption payment is due but on which (i) no Albuquerque Series 2005A Bonds are outstanding, no redemption payment as provided herein shall be required for such for such fiscal quarter or (ii) the aggregate principal amount of the Albuquerque Series 2005A Bonds outstanding is less than the regularly scheduled redemption amount, the redemption payment for such fiscal quarter shall be equal to the aggregate amount of such Albuquerque Series 2005A Bonds outstanding. Any redemption of the Albuquerque Series 2005A Bonds in excess of the amount required by the preceding sentence will be applied as a credit against the required redemptions in inverse order of the due date or, with the consent of the Administrative Agent and the Required Lenders, otherwise at the direction of TPUSA. Notwithstanding anything contained herein to the contrary, the foregoing redemptions shall not be made at any such time as an Event of Default shall have occurred and be continuing.

(f) *Subordination of Self-Funded Bonds*. Notwithstanding anything contained herein or in the Self-Funded Bonds, the Albuquerque Bond Indenture pursuant to which the Self-Funded Bonds have been issued or any other documents relating to the Self-Funded Bonds, TW, as holder of the Self-Funded Bonds and a Credit Party hereunder, covenants and agrees for itself and its successors and assigns that payment of principal and interest on the Self-Funded Bonds is expressly subordinated in right and order of payment to the prior payment in full in cash or cash equivalents of all Senior Debt as provided herein.

To the extent any payment of Senior Debt (whether by or on behalf of any obligor under the Self-Funded Bonds, as proceeds of security or enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or similar party under any bankruptcy, insolvency, receivership, fraudulent conveyance or similar law, then if such payment is recovered by, or paid over to, such trustee, receiver or other similar party, the Senior Debt or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

Upon any payment or distribution of assets or securities of any obligor under the Self-Funded Bonds (including, for purposes of this *Section 2.16(f)*, TPUSA) upon any dissolution, winding up, liquidation or reorganization of any obligor under the Self-Funded Bonds, whether voluntary or involuntary or in bankruptcy, insolvency, reorganization, receivership or similar proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of any obligor under the Self-Funded Bonds (subject to the power of a court of competent jurisdiction to make other equitable provision reflecting the rights conferred herein upon the Senior Debt and the holders thereof with respect to the Self-Funded Bonds and the holders thereof by a lawful plan of reorganization under applicable law),

(i) the holders of all Senior Debt shall first be entitled to receive indefeasible payment in full in cash or cash equivalents of all amounts due thereon (including interest accruing subsequent to the commencement of or filing of a petition in any bankruptcy or insolvency proceeding at the rate provided for under the terms of such Senior Debt), before the holders of the Self-Funded Bonds are entitled to receive any payment upon the principal of or interest on indebtedness evidenced by the Self-Funded Bonds or any distribution of assets in respect of the Self-Funded Bonds;

(ii) any payment or distribution of assets of any obligor under the Self-Funded Bonds of any kind or character, whether in cash, property or securities, to which the holders of the Self-Funded Bonds would be entitled except for these subordination provisions shall be paid by the liquidating trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Debt or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Debt may have been issued, ratably according to the aggregate amounts remaining unpaid on account of such Senior Debt held or presented by each, to the extent necessary to make payment in full of all Senior Debt remaining unpaid, or adequate provision therefor, after giving effect to any concurrent payment or distribution to the holders of such Senior Debt; and

(iii) in the event that, notwithstanding the foregoing, any payment or distribution of assets of any obligor under the Self-Funded Bonds of any kind or character, whether in case, property or securities, shall be received by the holders of the Self-Funded Bonds after the commencement of such marshalling of assets and before all Senior Debt is paid in full, or adequate provision made therefor, such payment or distribution shall be paid over to the holders of such Senior Debt or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of the Senior Debt may have been issued, for application to the all Senior Debt remaining unpaid as provided herein until all such Senior Debt shall have been paid in full, or adequate provision made therefor, after giving effect to any concurrent payment or distribution to the holders of such Senior Debt.

Except as otherwise provided in the foregoing paragraph in the case of a distribution of assets of any obligor under the Self-Funded Bonds under the circumstances therein described, and always subject to such provisions in such case, any obligor under the Self-Funded Bonds may make scheduled payments of principal and interest on the

Self-Funded Bonds as and when (but not sooner than the respective times when) such payments become due in accordance with the terms hereof (other than by acceleration, for which provision is hereinafter made), and, unless the terms of any Senior Debt then outstanding expressly prohibit such prepayment and the holder or holders of such Senior Debt have not waived such prohibition, any obligor under the Self-Funded Bonds may also make optional prepayment of principal and interest upon the Self-Funded Bonds, and the holders of the Self-Funded Bonds may receive such payments or permitted prepayments, unless at the time of any such payment or prepayment:

(a) either

(i) a payment default then exists in respect of any Senior Debt (including any payment that has become due by reason of acceleration), or

(ii) (A) a default otherwise exists with respect to any Senior Debt (other than a default in payment thereof when due), and (B) by reason of such default the holders of such Senior Debt (or a trustee on their behalf) are by their terms entitled to accelerate payment of such Senior Debt with notice or the passage of time or both, and (C) written notice of such default, specifying that it is a "*Payment Blockage Notice*" has been given to the holder of the Self-Funded Bonds by the Administrative Agent for and on behalf of the holders of the Senior Debt so affected; and

(b) the default or defaults referred to in the foregoing clause (a), and the consequences thereof, have not been effectively waived or cured and continue to exist.

Any period during which the conditions described in the foregoing clauses (a) and (b) exist is referred to herein as a "*Payment Blockage Period*". During any Payment Blockage Period, all payments and prepayments made on or in respect of the Self-Funded Bonds to the holders thereof, and any amounts recovered by any such holder upon the exercise of such holder's remedies and applicable to payments on the Self-Funded Bonds, during such Payment Blockage Period or otherwise in contravention of these subordination provisions, shall be held for and paid over to the Administrative Agent, subject to claim and recovery by or on behalf of, the holders of the Senior Debt for application to the Senior Debt then due as provided herein (or otherwise among such holders of Senior Debt as a court of competent jurisdiction may direct), whereupon the rights of the holders of the Self-Funded Bonds against the obligors under the Self-Funded Bonds shall be the same as though the payments so paid over or recovered had never been made by such obligors.

The holders of the Self-Funded Bonds hereby agree not to accelerate payment of the Self-Funded Bonds, or commence any action, suit or proceeding against any obligor under the Self-Funded Bonds, or otherwise to pursue any remedy to enforce such holder's rights to payment of the Self-Funded Bonds, or commence or join with any other creditors of any obligor under the Self-Funded Bonds in commencing any bankruptcy, reorganization or insolvency proceedings against any obligor under the Self-Funded Bonds, (a) at any time during a Payment Blockage Period, or (b) at any time, while a payment default exists in respect of any Senior Debt. An Event of Default occurring by reason of the failure of any obligor under the Self-Funded Bonds to pay principal of or interest on the Self-Funded Bonds when due (otherwise than by acceleration) shall be deemed cured and no longer continuing at such time as such principal and interest so due shall have been paid in full. Notwithstanding the foregoing, the holders of the Self-Funded Bonds may accelerate payment of the Self-Funded Bonds and, subject to and consistent with the prior rights of the holders of the Senior Debt, the holders of the Self-Funded Bonds may commence any action, suit or proceeding against any obligor under the Self-Funded Bonds with respect to the Self-Funded Bonds, or otherwise pursue any remedy to enforce such holder's rights to payment of the Self-Funded Bonds, or commence or join with any proceedings against any obligor under the Self-Funded Bonds, and may receive payments upon the Self-Funded Bonds under such circumstances, if:

(1) A default shall have existed under the Senior Debt and the indebtedness thereunder shall have been accelerated and the commitments relating thereto shall have been terminated; or

(2) A bankruptcy or insolvency proceeding shall have been commenced in respect of any obligor under the Self-Funded Bonds; or

provided, that upon any such acceleration, and in any such action, suit or proceeding, or in the enforcement of any such remedy, or in any such bankruptcy, reorganization or insolvency proceedings, the holder of the

Self-Funded Bonds shall not be entitled to receive any payments thereon until payment of all Senior Debt then due and payable (including that then due and payable by reason of acceleration thereof) shall have been paid in full, or provision for payment thereof satisfactory to the holders thereof shall have been made.

The holder of the Self-Funded Bonds will not sell, assign or otherwise transfer the Self-Funded Bonds without prior notice to and the consent of the Administrative Agent, which consent will not be unreasonably withheld or delayed, and in the case of any such sale, assignment or transfer the holder of the Self-Funded Bonds will have the purchaser, successor or transferee sign an acknowledgment of the terms of subordination provided herein.

Nothing contained herein shall prohibit the holders of the Self-Funded Bonds from joining any bankruptcy, reorganization or insolvency proceedings once commenced by other creditors of any obligor under the Self-Funded Bonds; *provided* that in any such proceedings the holders of the Self-Funded Bonds shall exercise such holder's rights with respect to the Self-Funded Bonds in a manner consistent with these subordination provisions and the priority of the Senior Debt herein established, and shall, to the extent permitted by law and consistent with these subordination provisions, and as requested by the Administrative Agent for the holders of Senior Debt for such purpose, assign such rights (including the rights to file proofs of claim and to vote claims on any plan of reorganization or arrangement) to the holders of the Senior Debt, pro rata in accordance with their claims or as they may otherwise agree among themselves.

Subject to the indefeasible payment in full of all Senior Debt in cash or cash equivalents, the holder of the Self-Funded Bonds, ratably in accordance with the amounts due them, shall be subrogated to the rights of the holders of Senior Debt to receive payments or distributions of cash, property or securities of any obligor under the Self-Funded Bonds applicable to the Senior Debt until the principal of and interest on the Self-Funded Bonds shall be paid in full and no such payments or distributions to the holders of the Senior Debt of cash, property or securities otherwise distributable to the holder of the Self-Funded Bonds (but for these subordination provisions) shall, as between any obligor under the Self-Funded Bonds, their creditors other than the holders of Senior Debt, and the holders of the Self-Funded Bonds, be deemed to be a payment by any obligor under the Self-Funded Bonds on account of the Senior Debt.

It is understood that these subordination provisions are and are intended solely for the purpose of defining the relative rights of the holder of the Self-Funded Bonds, on the one hand, and the holders of the Senior Debt, on the other hand. Nothing contained herein is intended to or shall impair, as between any obligor under the Self-Funded Bonds, their creditors other than the holders of Senior Debt, and the holder of the Self-Funded Bonds, the obligation of any obligor under the Self-Funded Bonds, which is unconditional and absolute, to pay to the holder of the Self-Funded Bonds, ratably in accordance with the respective amounts due them, the principal of and interest on the Self-Funded Bonds as and when the same shall become due and payable in accordance with their terms, or to affect the relative rights of the holder of the Self-Funded Bonds and creditors of any obligor under the Self-Funded Bonds other than the holders of the Senior Debt.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 *Taxes*.

(a) *Payments Free of Taxes*. Any and all payments by or on account of any obligation of the Borrowers hereunder or under any other Credit Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, *provided* that if the Borrowers shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrowers shall make such deductions and (iii) the Borrowers shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) *Payment of Other Taxes by the Borrowers*. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) *Indemnification by the Borrowers*. The Borrowers shall indemnify the Administrative Agent, each Lender and each L/C Issuer, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or an L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender or an L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error.

(d) *Evidence of Payments*. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) *Status of Lenders*. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Credit Document shall deliver to the applicable Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by such Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by a Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by a Borrower or the Administrative Agent as will enable a Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that a Borrower is resident for tax purposes in the United States, any Foreign Lender shall deliver to such Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Credit Agreement (and from time to time thereafter upon the request of any Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Internal Revenue Code, (B) a “10 percent shareholder” of any Borrower within the meaning of section 881(c)(3)(B) of the Internal Revenue Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Internal Revenue Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit a Borrower to determine the withholding or deduction required to be made.

Without limiting the obligations of the Lenders set forth above regarding delivery of certain forms and documents to establish each Lender's status for U.S. withholding tax purposes, each Lender agrees promptly to deliver to the Administrative Agent or any Borrower, as the Administrative Agent or any Borrower shall reasonably request, on or prior to the Closing Date, and in a timely fashion thereafter, such other documents and forms required by any relevant taxing authorities under the Laws of any other jurisdiction, duly executed and completed by such Lender, as are required under such Laws to confirm such Lender's entitlement to any available exemption from, or reduction of, applicable withholding taxes in respect of all payments to be made to such Lender outside of the U.S. by such Borrower pursuant to this Credit Agreement or otherwise to establish such Lender's status for withholding tax purposes in such other jurisdiction. Each Lender shall promptly (i) notify the Administrative Agent of any change in circumstances which would modify or render invalid any such claimed exemption or reduction, and (ii) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any such jurisdiction that a Borrower make any deduction or withholding for taxes from amounts payable to such Lender. Additionally, a Borrower shall promptly deliver to the Administrative Agent or any Lender, as the Administrative Agent or such Lender shall reasonably request, on or prior to the Closing Date, and in a timely fashion thereafter, such documents and forms required by any relevant taxing authorities under the Laws of any jurisdiction, duly executed and completed by such Borrower, as are required to be furnished by such Lender or the Administrative Agent under such Laws in connection with any payment by the Administrative Agent or any Lender of Taxes or Other Taxes, or otherwise in connection with the Credit Documents, with respect to such jurisdiction.

(f) *Treatment of Certain Refunds*. If the Administrative Agent, any Lender or an L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Borrower or with respect to which any Borrower has paid additional amounts pursuant to this Section, it shall pay to the applicable Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, such Lender or an L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that each Borrower, upon the request of the Administrative Agent, such Lender or an L/C Issuer, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or an L/C Issuer in the event the Administrative Agent, such Lender or an L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or an L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrowers or any other Person.

3.02 *Illegality*.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans (whether denominated in Dollars or an Alternative Currency), or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or any Alternative Currency in the applicable interbank market, then, on notice thereof by such Lender to the applicable Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans in the affected currency or currencies or, in the case of Eurocurrency Rate Loans in Dollars, to convert Loans that are Base Rate Loans to Eurocurrency Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the applicable Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the applicable Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable and such Loans are denominated in Dollars, convert all Eurocurrency Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment or conversion, the applicable Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 ***Inability to Determine Rates*.**

If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan (whether denominated in Dollars or an Alternative Currency), or (c) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate Loan, the Administrative Agent will promptly so notify the Borrowers and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans in the affected currency or currencies or, failing that, will be deemed to have converted such request into a request for a Borrowing of Loans that are Base Rate Loans in the amount specified therein.

3.04 ***Increased Cost; Capital Adequacy*.**

(a) *Increased Costs Generally*. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except (A) any reserve requirement reflected in the Eurocurrency Rate) and (B) the requirements of the Bank of England and the Financial Services Authority or the European Central Bank reflected in the Mandatory Cost, other than as set forth below) or either L/C Issuer;

(ii) subject any Lender or L/C Issuer to any tax of any kind whatsoever with respect to this Credit Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurocurrency Loan made by it, or change the basis of taxation of payments to such Lender or L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by *Section 3.01* and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or L/C Issuer);

(v) the Mandatory Cost, as calculated hereunder, does not represent the cost to any Lender of complying with the requirements of the Bank of England and/or the Financial Services Authority or the European Central Bank in relation to its making, funding or maintaining Eurocurrency Rate Loans; or

(vi) impose on any Lender or L/C Issuer or the London interbank market any other condition, cost or expense affecting this Credit Agreement or Eurocurrency Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or L/C Issuer, the applicable Borrowers will pay to such Lender or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements*. If any Lender or L/C Issuer determines that any Change in Law affecting such Lender or L/C Issuer or any Lending Office of such Lender or such Lender's or L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or L/C Issuer's capital or on the capital of such Lender's or L/C Issuer's holding company, if any, as a consequence of this Credit Agreement, the Commitments of such Lender or the Loans made by, or participations

in Letters of Credit held by, such Lender, or the Letters of Credit issued by L/C Issuer, to a level below that which such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or L/C Issuer's policies and the policies of such Lender's or L/C Issuer's holding company with respect to capital adequacy), then from time to time the applicable Borrower will pay to such Lender or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement*. A certificate of a Lender or L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or L/C Issuer or its holding company, as the case may be, as specified in subsection *(a)* or *(b)* of this Section and delivered to the applicable Borrower shall be conclusive absent manifest error. The applicable Borrower shall pay such Lender or L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) *Delay in Requests*. Failure or delay on the part of any Lender or L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or L/C Issuer's right to demand such compensation, *provided* that the Borrowers shall not be required to compensate a Lender or L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or L/C Issuer, as the case may be, notifies the applicable Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) *Reserves on Eurocurrency Rate Loans*. The Borrowers shall pay to each Lender, as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrowers shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

3.05 *Compensation for Losses*.

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrowers;

(c) any failure by the Borrowers to make payment of any Loan or drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrowers pursuant to *Section 11.13*;

including any loss of anticipated profits, any foreign exchange losses and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this *Section 3.05*, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Base Rate used in determining the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

3.06 ***Mitigation Obligations; Replacement of Lenders*.**

(a) *Designation of a Different Lending Office*. If any Lender requests compensation under *Section 3.04*, or any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to *Section 3.01*, or if any Lender gives a notice pursuant to *Section 3.02*, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to *Section 3.01* or *3.04*, as the case may be, in the future, or eliminate the need for the notice pursuant to *Section 3.02*, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) *Replacement of Lenders*. If any Lender requests compensation under *Section 3.04*, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to *Section 3.01*, the Borrowers may replace such Lender in accordance with *Section 11.13*.

3.07 ***Survival Losses*.**

All of the Borrowers' obligations under this *Article III* shall survive termination of the Aggregate Commitments and repayment of all other Obligations and Foreign Obligations hereunder.

ARTICLE IV
GUARANTY

4.01 ***The Guaranty*.**

(a) Each of the Domestic Guarantors hereby jointly and severally guarantees to the Administrative Agent and each of the holders of the Obligations as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. The Domestic Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Domestic Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

(b) Each of the Foreign Guarantors hereby jointly and severally guarantees to the Administrative Agent and each of the holders of the Foreign Obligations as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Foreign Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. Each of the Foreign Guarantors hereby further agrees that if any of such obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Foreign Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of such obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

(c) Notwithstanding any provision to the contrary contained herein or in any other of the Credit Documents or Swap Contracts, the obligations of each Guarantor (in its capacity as such) under this Credit Agreement and the other Credit Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable Law.

4.02 ***Obligations Unconditional*****.**

(a) The obligations of the Domestic Guarantors under *Section 4.01* are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Credit Documents or other documents relating to the Obligations, or any substitution, compromise, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this *Section 4.02* that the obligations of the Domestic Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Domestic Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrowers or any other Guarantor for amounts paid under this *Article IV* until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto have expired or terminated.

(b) The obligations of the Foreign Guarantors under *Section 4.01* are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Credit Documents or other documents relating to the Foreign Obligations, or any substitution, compromise, release, impairment or exchange of any other guarantee of or security for any of the Foreign Obligations, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this *Section 4.02* that the obligations of the Foreign Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each of the Foreign Guarantors agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Foreign Borrowers or any other Foreign Guarantor for amounts paid under this *Article IV* until such time as the Foreign Obligations have been irrevocably paid in full and the commitments relating thereto have expired or terminated.

(c) Without limiting the generality of the foregoing *subsections (a)* and *(b)*, it is agreed that, to the fullest extent permitted by Law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(i) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of any of the Credit Documents, or other documents relating to the Obligations or any other agreement or instrument referred to therein shall be done or omitted;

(iii) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Credit Documents or any other documents relating to the Obligations or any other agreement or instrument referred to therein shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien granted to, or in favor of, the Administrative Agent or any holder of the Obligations as security for any of the Obligations shall fail to attach or be perfected; or

(v) any of the Obligations shall be determined to be void or voidable (including for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including any creditor of any Guarantor).

(d) With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest, notice of acceptance of the guaranty given hereby and of extensions of credit that may constitute obligations guaranteed hereby, notices of amendments, waivers, consents and supplements to the Credit Documents and other documents relating to the Obligations, or the compromise, release or exchange of collateral or security, and all other notices whatsoever, and any requirement that the Administrative Agent or any holder of the Obligations exhaust any right, power or remedy or proceed against any Person under any of the Credit Documents or any other documents relating to the Obligations or any other agreement or instrument referred to therein, or against any other Person under any other guarantee of, or security for, any of the Obligations.

4.03 ***Reinstatement.***

Neither the Guarantors' obligations hereunder nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of the Borrowers, by reason of any Borrower's bankruptcy or insolvency or by reason of the invalidity or unenforceability of all or any portion of the Obligations. In addition:

(a) The obligations of each Domestic Guarantor under this *Article IV* shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any Debtor Relief Law or otherwise, and each Domestic Guarantor agrees that it will indemnify the Administrative Agent and each holder of the Obligations on demand for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by the Administrative Agent or such holder of the Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law.

(b) The obligations of each Foreign Guarantor under this *Article IV* shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Foreign Obligations is rescinded or must be otherwise restored by any holder of any of the Foreign Obligations, whether as a result of any Debtor Relief Law or otherwise, and each of the Foreign Guarantors agrees that it will indemnify the Administrative Agent and each holder of the Foreign Obligations on demand for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by the Administrative Agent or such holder of the Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law.

4.04 ***Certain Waivers.***

Each Guarantor acknowledges and agrees that (a) the guaranty given hereby may be enforced without the necessity of resorting to or otherwise exhausting remedies in respect of any other security or collateral interests, and without the necessity at any time of having to take recourse against the Borrowers hereunder or against any

collateral securing the Obligations or otherwise, and (b) it will not assert any right to require the action first be taken against the Borrowers or any other Person (including any co-guarantor) or pursuit of any other remedy or enforcement any other right, and (c) nothing contained herein shall prevent or limit action being taken against the Borrowers hereunder, under the other Credit Documents or the other documents and agreements relating to the Obligations or from foreclosing on any security or collateral interests relating hereto or thereto, or from exercising any other rights or remedies available in respect thereof, if neither the Borrowers nor the Guarantors shall timely perform their obligations, and the exercise of any such rights and completion of any such foreclosure proceedings shall not constitute a discharge of the Guarantors' obligations hereunder unless as a result thereof, the Obligations shall have been paid in full and the commitments relating thereto shall have expired or terminated, it being the purpose and intent that the Guarantors' obligations hereunder be absolute, irrevocable, independent and unconditional under all circumstances. Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to *Section 4.02* and through the exercise of rights of contribution pursuant to *Section 4.06*.

4.05 ***Remedies.***

(a) The Domestic Guarantors agree that, to the fullest extent permitted by Law, as between the Domestic Guarantors, on the one hand, and holders of the Obligations, on the other hand, the Obligations may be declared to be forthwith due and payable as provided in *Section 9.02* (and shall be deemed to have become automatically due and payable in the circumstances specified in *Section 9.02*) for purposes of *Section 4.01* notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Domestic Guarantors for purposes of *Section 4.01*. The Domestic Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the holders of the Obligations may exercise their remedies thereunder in accordance with the terms thereof.

(b) Each of the Foreign Guarantors agrees that, to the fullest extent permitted by Law, as between the Foreign Guarantors, on the one hand, and the holders of the Foreign Obligations, on the other hand, the Foreign Obligations may be declared to be forthwith due and payable as provided in *Section 9.02* (and shall be deemed to have become automatically due and payable in the circumstances provided in *Section 9.02*) for purposes of *Section 4.01* notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Foreign Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Foreign Obligations being deemed to have become automatically due and payable), the Foreign Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Foreign Guarantors for purposes of *Section 4.01*. Each of the Foreign Guarantors acknowledges and agrees that its obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the holders of the Foreign Obligations may exercise their remedies thereunder in accordance with the terms thereof.

4.06 ***Rights of Contribution.***

(a) The Domestic Guarantors hereby agree as among themselves that, in connection with payments made hereunder, each Domestic Guarantor shall have a right of contribution from each other Domestic Guarantor in accordance with applicable Law. Such contribution rights shall be subordinate and subject in right of payment to the Obligations until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated, and none of the Domestic Guarantors shall exercise any such contribution rights until the Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated.

(b) The Foreign Guarantors hereby agree as among themselves that, in connection with payments made hereunder, each of the Foreign Guarantors shall have a right of contribution from each other Guarantor in

accordance with applicable Law. Such contribution rights shall be subordinate and subject in right of payment to the Obligations until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated, and none of the Foreign Guarantors shall exercise any such contribution rights until the Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated.

4.07 ***Guaranty of Payment; Continuing Guarantee*****.**

(a) The guarantee given by the Domestic Guarantors in this *Article IV* is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Obligations whenever arising.

(b) The guarantee given by the Foreign Guarantors in this *Article IV* is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Foreign Obligations whenever arising.

ARTICLE V

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

5.01 ***Conditions to Initial Credit Extensions.***

The obligation of each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) *Executed Credit Documents*. The Administrative Agent's receipt of counterparts of this Credit Agreement, the Notes requested by the Lenders, the Security Agreements, the Pledge Agreements, the Mortgages and the Guaranties, in each case, dated as of the Closing Date, duly executed by a Responsible Officer of each Credit Party party thereto and by each Lender party thereto, and in form and substance satisfactory to the Administrative Agent and each of the Lenders.

(b) *Organization Documents, Etc*. The Administrative Agent's receipt of a duly executed certificate of a Responsible Officer of each Credit Party, in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders, attaching each of the following documents and certifying that each is true, correct and complete and in full force and effect as of the Closing Date:

(i) *Charter Documents*. Copies of its articles or certificate of organization or formation, certified to be true, correct and complete as of a recent date by the appropriate Governmental Authority of the jurisdiction of its organization or formation;

(ii) *Bylaws*. Copies of its bylaws, operating agreement or partnership agreement;

(iii) *Resolutions*. Copies of its resolutions approving and adopting the Credit Documents to which it is party, the transactions contemplated therein, and authorizing the execution and delivery thereof;

(iv) *Incumbency*. Incumbency certificates identifying the Responsible Officers of such Credit Party that are authorized to execute Credit Documents and to act on such Credit Party's behalf in connection with the Credit Documents; and

(v) *Good Standing Certificates*. Certificates of good standing or the equivalent from its jurisdiction of organization or formation and from each other jurisdiction where failure to be in good standing would reasonably be expected to have a Material Adverse Effect, in each case certified as of a recent date by the appropriate Governmental Authority.

(c) *Opinions of Counsel*. The Administrative Agent's receipt of duly executed favorable opinions of counsel to the Credit Parties, dated as of the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders.

(d) *Financial Statements*. The Administrative Agent's receipt of each of the following:

(i) The audited consolidated balance sheets of the Consolidated Group for the fiscal years ended December 31, 2002, December 31, 2003 and December 31, 2004 and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal years (including the notes thereto), prepared in accordance with GAAP; and

(ii) The unaudited consolidated and consolidating financial statements of the Consolidated Group for the fiscal quarters ended March 31, 2005 and June 30, 2005 and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such fiscal quarters, prepared in accordance with GAAP.

(e) *Officer Certificates*. The Administrative Agent's receipt of a certificate or certificates of a Responsible Officer of the Parent, dated as of the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent, certifying each of the following:

(i) *Consents*. No consents, licenses or approvals are required in connection with the execution, delivery and performance by any Credit Party of the Credit Documents to which it is a party, other than as are in full force and effect and, to the extent requested by the Administrative Agent, are attached thereto;

(ii) *Material Adverse Effect*. There has been no event or circumstance since the date of the unaudited financial statements for the fiscal quarter ending June 30, 2005 that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect;

(iii) *Financial Statements*. The annual and quarterly financial statements delivered to the Administrative Agent pursuant to *Section 5.01(d)* hereof (A) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, (B) fairly present the financial condition of the Consolidated Group as of the date thereof and the results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein (and with respect to such quarterly statements, subject to the absence of footnotes and to normal year-end audit adjustments) and (C) show all material indebtedness and other liabilities, direct or contingent, of the Consolidated Group as of the date thereof, including liabilities for taxes, material commitments and Indebtedness; and

(iv) *Financial Covenant Calculations*. The calculation of the financial covenants set forth in *Section 8.11* as of the end of the fiscal quarter of the Parent ending on June 30, 2005.

(f) *Personal Property Collateral*. The respective Collateral Agent's of the following, each in form and substance satisfactory to the Collateral Agent:

(i) *Lien Priority*. Evidence that (A) the respective Collateral Agent, on behalf of the Lenders, holds a perfected, first priority Lien on all Collateral (subject only to Permitted Liens) and (B) none of the Collateral is subject to any Liens (other than Permitted Liens);

(ii) *UCC Financing Statements*. Such UCC financing statements (or equivalent filings in foreign jurisdictions) as are necessary or appropriate, in the respective Collateral Agent's discretion, to perfect the security interests in the Collateral;

(iii) *Intellectual Property*. Such patent, trademark and copyright notices and recordations as are necessary or appropriate, in the respective Collateral Agent's discretion, to perfect the security interests in the Credit Parties' IP Rights;

(iv) *Capital Stock*. Original certificates evidencing the Capital Stock pledged pursuant to the Collateral Documents (to the extent such Capital Stock is certificated), together with undated stock transfer powers executed in blank;

(g) *Real Property Collateral*. For all Mortgaged Properties other than the Mortgaged Property with respect to the Albuquerque Project, the respective Collateral Agent's receipt of the following, each in form and substance satisfactory to the Collateral Agent or the Foreign Collateral Agent, as applicable:

(i) *Surveys*. Copies of recent ALTA surveys (or equivalent in foreign jurisdictions) of each Mortgaged Property by registered engineers or land surveyors;

(ii) *Title Policies*. Standard ALTA mortgagee (or equivalent in foreign jurisdictions) polices insuring the priority of the Mortgages and copies of recorded documentation relating to any exceptions;

(iii) *Appraisals*. Existing appraisals, if any, of each Mortgaged Property;

(iv) *Environmental Reports*. Copies of environmental reports and other environmental documentation, if any, relating to the Mortgaged Properties and other real property leased by members of the Consolidated Group; and

(v) *Flood Insurance*. For each Mortgaged Property located in the United States, evidence as to whether such Mortgaged Property is a Flood Hazard Property, and if such Mortgaged Property is a Flood Hazard Property, (A) evidence as to whether the community in which such Mortgaged Property is located is participating in the National Flood Insurance Program, (B) the applicable Credit Party's written acknowledgment of receipt of written notification from the Administrative Agent as whether such Mortgaged Property is a Flood Hazard Property and whether the community in which such Mortgaged Property is located is participating in the National Flood Insurance Program, and (C) copies of insurance policies or certificates of insurance of the Credit Parties and their Subsidiaries evidencing flood insurance reasonably satisfactory to the Domestic Collateral Agent and naming the Domestic Collateral Agent as sole loss payee on behalf of the Lenders.

(h) *Evidence of Insurance*. The Collateral Agent's receipt of copies of insurance certificates or policies with respect to all insurance required to be maintained pursuant to the Credit Documents. Such insurance certificates or policies pertaining to assets located in the United States shall identify the Domestic Collateral Agent as sole loss payee, with respect to flood hazard and casualty insurance, and as additional insured, with respect to liability insurance. Such insurance certificates or policies pertaining to assets located outside the United States shall be in form and substance reasonably satisfactory to the Foreign Collateral Agent.

(i) *Existing Credit Agreement*. The Administrative Agent's receipt of evidence, in form and substance satisfactory to the Administrative Agent, that the Existing Credit Agreement has been (or concurrently with the Closing Date is being) terminated and all Liens securing obligations under the Existing Credit Agreement have been (or concurrently with the Closing Date are being) released.

(j) *Other*. The Administrative Agent's receipt of such other assurances, certificates, documents, consents or opinions as the Administrative Agent or the Lenders may require.

(k) *Fees and Expenses*. All fees and expenses (including, unless waived by the Administrative Agent, all reasonable fees, expenses and disbursements of any law firm or other counsel to the Administrative Agent or the Foreign Collateral Agent) required to be paid on or before the Closing Date shall have been paid.

Without limiting the generality of the provisions of *Section 10.06*, for purposes of determining compliance with the conditions specified in this *Section 5.01*, each Lender that has signed this Credit Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

5.02 ***Conditions to all Credit Extensions*.**

The obligation of each Lender to honor any Request for Credit Extension is subject to the following conditions precedent:

(a) The representations and warranties of the Borrowers and each other Credit Party contained in *Article VI* or any other Credit Document, or that are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respect on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this *Section 5.02*, the representations and warranties contained in *subsections (a)* and *(b)* of *Section 6.05* shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a)* and *(b)*, respectively, of *Section 7.01*.

(b) No Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the applicable L/C Issuer or the applicable Swingline Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of a Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the Administrative Agent, the Required Lenders (in the case of any Loans to be denominated in an Alternative Currency) or the applicable L/C Issuer (in the case of any Letter of Credit to be denominated in an Alternative Currency) would make it impracticable for such Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to other Types of Loans, or a continuation of Eurocurrency Rate Loans) submitted by the Borrowers shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in *Sections 5.02(a)* and *(b)* have been satisfied on and as of the date of the applicable Credit Extension.

5.03 ***Additional Conditions to Issuance of the IRB Letter of Credit*.**

In addition to satisfaction of the conditions provided in *Sections 5.01* and *5.02*, issuance of the IRB Letter of Credit shall be subject to satisfaction of the following conditions:

(a) *Evidence of Closing of the Bonds*. The Administrative Agent's receipt of evidence satisfactory to the Administrative Agent of execution and delivery of the Albuquerque Bond Indenture and the related bond documents, and the issuance of the initial bonds thereunder, including copies of the executed Albuquerque Bond Indenture and related bond documents, together with opinions of counsel and other documents and deliveries relating thereto.

(b) *Issuance of Self-Funded Bonds*. Evidence of the issuance and purchase of Self-Funded Bonds in an aggregate principal amount equal to one-third ($1/3^{rd}$) of the aggregate principal amount of the Albuquerque Series 2005A Bonds that have been issued, and deposit of the proceeds therefrom into the Project Fund (as referenced and defined in the Albuquerque Bond Indenture).

(c) *Mortgage and Other Deliverables with respect to the Albuquerque Project*. Receipt by the Domestic Collateral Agent of a Mortgage with respect to the real property of the Albuquerque Project, together with the other deliveries for Mortgaged Properties referenced in *clauses (i)* through *(v)* of *Section 5.01(g)*, each in form and substance reasonably acceptable to the Administrative Agent (subject to *Section 7.16(a)*).

(d) *Other Documents*. Other documents, certificates, statements, instruments, approvals, architect's contracts, engineer's contracts, general contractor's contracts (and, if requested by the Administrative Agent, certified duplicates of executed copies thereof) or opinions, as the Administrative Agent may reasonably request.

5.04 ***Additional Conditions to Increases in the Stated Amount of the IRB Letter of Credit*.**

In addition to satisfaction of the conditions provided in *Sections 5.01*, *5.02* and *5.03*, amendment of the IRB Letter of Credit to increase the stated amount thereof to cover Additional Bonds issued after the initial issuance of Bonds under the Albuquerque Bond Indenture, shall be subject to satisfaction of the following conditions:

(a) *Evidence of Issuance of the Additional Bonds*. Evidence satisfactory to the Administrative Agent of the issuance of the Additional Bonds, including copies of the requests, certificates and opinions of counsel in connection relating thereto.

(b) *Mortgage on the Albuquerque Project*. If applicable, receipt by the Administrative Agent of an endorsement to the title insurance policy on the Albuquerque Project increasing the insured amount to cover the cost of improvements made or expected to the date thereof.

(c) *Issuance of Self-Funded Bonds*. Evidence of the issuance and purchase of Self-Funded Bonds in an aggregate principal amount equal to one-third ($1/3^{rd}$) of the aggregate principal amount of the Albuquerque Series 2005A Bonds, including the Additional Bonds, that have been issued, and deposit of the proceeds therefrom into the Project Fund (as referenced and defined in the Albuquerque Bond Indenture).

(d) *Other Documents*. Receipt by the Administrative Agent of such other documents, certificates, statements, instruments, approvals, architect's contracts, engineer's contracts, general contractor's contracts (and, if requested by the Administrative Agent, certified duplicates of executed copies thereof) or opinions, as the Administrative Agent may reasonably request.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Except as otherwise provided in *Section 6.20*, each of the Credit Parties represent and warrant to the Administrative Agent and the Lenders that:

6.01 ***Existence, Qualification and Power*.**

Each Credit Party (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Credit Documents to which it is a party, (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, and (d) is in compliance with all Laws; except in each case referred to in *clause (b)(i)*, *(c)* or *(d)*, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.02 ***Authorization; No Contravention*.**

The execution, delivery and performance by each Credit Party of each Credit Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such

Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

6.03 ***Governmental Authorization; Other Consents*****.**

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Credit Party of this Credit Agreement or any other Credit Document (other than (a) as have already been obtained and are in full force and effect and (b) filings to perfect security interested granted pursuant to the Credit Documents).

6.04 ***Binding Effect*****.**

This Credit Agreement has been, and each other Credit Document, when delivered hereunder, will have been, duly executed and delivered by each Credit Party that is party thereto. This Credit Agreement constitutes, and each other Credit Document when so delivered will constitute, a legal, valid and binding obligation of such Credit Party, enforceable against each Credit Party that is party thereto in accordance with its terms, except to the extent the enforceability thereof may be limited by applicable Debtor Relief Laws affecting creditors' rights generally and by equitable principles of law (regardless of whether enforcement is sought in equity or at law).

6.05 ***Financial Statements*****.**

(a) The audited consolidated balance sheet of the Consolidated Group for the most recent fiscal year ended, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, including the notes thereto (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Consolidated Group as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Consolidated Group as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated and consolidating balance sheet of the Consolidated Group for the most recent fiscal quarter ended, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such fiscal quarter (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, (ii) fairly present the financial condition of the Consolidated Group as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses *(i)* and *(ii)*, to the absence of footnotes and to normal year-end audit adjustments, and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Consolidated Group as of the date of such financial statements, including liabilities for taxes, material commitments and Indebtedness.

6.06 ***No Material Adverse Effect.***

Since June 30, 2005, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

6.07 ***Litigation*****.**

There are no actions, suits, investigations, criminal prosecutions, civil investigative demands, imposition of criminal or civil fines or penalties, proceedings, claims or disputes pending or, to the knowledge of the Borrowers after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or

before any Governmental Authority, by or against any member of the Consolidated Group or against any of their properties or revenues that (a) purport to affect or pertain to this Credit Agreement or any other Credit Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate would reasonably be expected to have a Material Adverse Effect.

6.08 ***No Default.***

No member of the Consolidated Group is in default under or with respect to any Contractual Obligation that would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Credit Agreement or any other Credit Document.

6.09 ***Ownership of Property; Liens.***

Each member of the Consolidated Group has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Consolidated Group is subject to no Liens, other than Permitted Liens.

6.10 ***Environmental Compliance.***

The Consolidated Group conducts in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrowers have reasonably concluded that such Environmental Laws and claims would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.11 ***Insurance.***

The properties of the Consolidated Group are insured with financially sound and reputable insurance companies not Affiliates of the Borrowers, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrowers or the applicable Subsidiary operates; *provided* that the Consolidated Group may self-insure to the extent customary among companies engaged in similar businesses and operating in similar localities.

6.12 ***Taxes.***

Each member of the Consolidated Group has filed all federal, state and other material tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the Borrowers or any of their Subsidiaries that would, if made, have a Material Adverse Effect.

6.13 ***ERISA Compliance.***

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the IRS or an application for such a letter is currently pending before the IRS with respect thereto and, to the best knowledge of the Borrowers, nothing has occurred that would prevent, or cause the loss of, such qualification. Each Borrower and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Internal Revenue Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Internal Revenue Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of each Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that would be reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or would reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither any Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither any Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred that, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither any Borrower nor any ERISA Affiliate has engaged in a transaction that would reasonably be expected to be subject to Sections 4069 or 4212(c) of ERISA.

6.14 ***Subsidiaries*****.**

Set forth on *Schedule 6.14* (as may be updated by the Borrowers from time to time), with respect to each Credit Party, is the jurisdiction of organization, classes of Capital Stock (including options, warrants, rights of subscription, conversion, exchangeability and other similar rights), and ownership and ownership percentages of each Subsidiary of such Credit Party. The outstanding Capital Stock has been validly issued, is owned free of Liens other than the Liens created by the Collateral Documents, and with respect to any outstanding shares of Capital Stock of a corporation, such shares have been validly issued and are fully paid and non-assessable. The outstanding shares of Capital Stock are not subject to any buy-sell, voting trust or other shareholder agreement except as identified on *Schedule 6.14*. The Credit Parties have no Subsidiaries other than those specifically disclosed on *Schedule 6.14*.

6.15 ***Margin Regulations; PUHCA; Investment Company Act*****.**

(a) The Credit Parties are not engaged and will not engage, principally or as one of their important activities, in the business of purchasing or carrying "margin stock" (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of the Borrowers only or of the Consolidated Group on a consolidated basis) will be margin stock.

(b) None of the Credit Parties, any Person Controlling a Credit Party, or any Subsidiary (i) is a "holding company," or a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935, or (ii) is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

6.16 ***Disclosure*****.**

No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Credit Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Credit Agreement or delivered hereunder or under any other Credit Document (in each case, as modified or supplemented by other information so furnished) considered as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

6.17 ***Compliance with Laws*****.**

Each member of the Consolidated Group is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions, settlements or other agreements with any Governmental Authority and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

6.18 ***Security Agreement.***

The Security Agreements are effective to create in favor of the respective Collateral Agent, for the ratable benefit of the holders of the secured obligations identified therein, a legal, valid and enforceable security interest in the Collateral identified therein, except to the extent the enforceability thereof may be limited by applicable Debtor Relief Laws affecting creditors' rights generally and by equitable principles of law (regardless of whether enforcement is sought in equity or at law) and, when UCC financing statements (or other appropriate notices) in appropriate form are duly filed at the locations identified in the Security Agreements, the Security Agreements shall create a fully perfected first priority Lien on, and security interest in, all right, title and interest of the grantors thereunder in such Collateral, in each case prior and superior in right to any other Lien (other than Permitted Liens).

6.19 ***Pledge Agreement.***

The Pledge Agreements are effective to create in favor of the respective Collateral Agent, for the ratable benefit of the holders of the secured obligations identified therein, a legal, valid and enforceable security interest in the Collateral identified therein, except to the extent the enforceability thereof may be limited by applicable Debtor Relief Laws affecting creditors' rights generally and by equitable principles of law (regardless of whether enforcement is sought in equity or at law). The Domestic Pledge Agreement shall create a fully perfected first priority Lien on, and security interest in, all right, title and interest of the pledgors thereunder in the Collateral identified therein, in each case prior and superior in right to any other Lien (i) with respect to any such Collateral that is a "security" (as such term is defined in the UCC) and is evidenced by a certificate, when such Collateral is delivered to the Domestic Collateral Agent with duly executed stock powers with respect thereto, (ii) with respect to any such Collateral that is a "security" (as such term is defined in the UCC) but is not evidenced by a certificate, when UCC financing statements in appropriate form are filed in the appropriate filing offices in the jurisdiction of organization of the pledgor or when "control" (as such term is defined in the UCC) is established by the Domestic Collateral Agent over such interests in accordance with the provision of Section 8-106 of the UCC, or any successor provision, and (iii) with respect to any such Collateral that is not a "security" (as such term is defined in the UCC), when UCC financing statements in appropriate form are filed in the appropriate filing offices in the jurisdiction of organization of the pledgor. When each of the deliveries and notices required under the Foreign Pledge Agreement have been made in accordance with applicable Law and all recording, documentary or similar taxes, if any, have been paid, the Foreign Security Agreement shall create a fully perfected first priority Lien on, and security interest in, all right, title and interest of the grantors thereunder in the Collateral identified therein, in each case prior and superior in right to any other Lien.

6.20 ***Representations as to Foreign Credit Parties*****.**

Each of the Borrowers and each Foreign Credit Party represents and warrants to the Administrative Agent and the Lenders that:

(a) Such Foreign Credit Party is subject to civil and commercial Laws with respect to its obligations under this Credit Agreement and the other Credit Documents to which it is a party (collectively as to such Foreign Credit Party, the "*Applicable Foreign Credit Party Documents*"), and the execution, delivery and performance by such Foreign Credit Party of the Applicable Foreign Credit Party Documents constitute and

will constitute private and commercial acts and not public or governmental acts. Neither such Foreign Credit Party nor any of its property has any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the laws of the jurisdiction in which such Foreign Credit Party is organized and existing in respect of its obligations under the Applicable Foreign Credit Party Documents.

(b) The Applicable Foreign Credit Party Documents are in proper legal form under the Laws of the jurisdiction in which such Foreign Credit Party is organized and existing for the enforcement thereof against such Foreign Credit Party under the Laws of such jurisdiction, and to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Credit Party Documents. It is not necessary to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Credit Party Documents that the Applicable Foreign Credit Party Documents be filed, registered or recorded with, or executed or notarized before, any court or other authority in the jurisdiction in which such Foreign Credit Party is organized and existing or that any registration charge or stamp or similar tax be paid on or in respect of the Applicable Foreign Credit Party Documents or any other document, except for (i) any such filing, registration, recording, execution or notarization as has been made or is not required to be made until the Applicable Foreign Credit Party Document or any other document is sought to be enforced and (ii) any charge or tax as has been timely paid.

(c) There is no tax, levy, impost, duty, fee, assessment or other governmental charge, or any deduction or withholding, imposed by any Governmental Authority in or of the jurisdiction in which such Foreign Credit Party is organized and existing either (i) on or by virtue of the execution or delivery of the Applicable Foreign Credit Party Documents or (ii) on any payment to be made by such Foreign Credit Party pursuant to the Applicable Foreign Credit Party Documents, except as has been disclosed to the Administrative Agent.

(d) The execution, delivery and performance of the Applicable Foreign Credit Party Documents executed by such Foreign Credit Party are, under applicable foreign exchange control regulations of the jurisdiction in which such Foreign Credit Party is organized and existing, not subject to any notification or authorization except (i) such as have been made or obtained or (ii) such as cannot be made or obtained until a later date (*provided* that any notification or authorization described in clause (ii) shall be made or obtained as soon as is reasonably practicable).

6.21 ***Mortgages*****.**

Each of the Mortgages is effective to create in favor of the respective Collateral Agent, for the ratable benefit of the holders of the secured obligations identified therein, a legal, valid and enforceable security interest in the Mortgaged Properties identified therein in conformity with applicable Law, except to the extent the enforceability thereof may be limited by applicable Debtor Relief Laws affecting creditors' rights generally and by equitable principles of law (regardless of whether enforcement is sought in equity or at law) and, when the Mortgages and UCC financing statements (or equivalent in foreign jurisdictions) in appropriate form are duly recorded at the locations identified in the Mortgages, and recording or similar taxes, if any, are paid, the Mortgages shall constitute a fully perfected first priority Lien on, and security interest in, all right, title and interest of the grantors thereunder in such Mortgaged Properties, in each case prior and superior in right to any other Lien (other than Permitted Liens).

6.22 ***Real Property*****.**

Set forth on *Schedule 6.22*, with respect to each member of the Consolidated Group, is a true, correct and complete list of (a) all real property (including street address) owned by such Person, (b) all real property (including street address) leased by such Person, and (c) identifying each Mortgaged Property of such Person.

ARTICLE VII

AFFIRMATIVE COVENANTS

Until the Loan Obligations shall have been paid in full or otherwise satisfied, and the Commitments hereunder shall have expired or been terminated, the Borrowers will, and (except in the case of the covenants set forth in *Sections 7.01*, *7.02* and *7.03*) will cause each of their Subsidiaries to:

7.01 ***Financial Statements*****.**

Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event not later than the earlier of (i) the date such deliveries are required by the SEC and (ii) ninety days after the end of each fiscal year of the Parent, consolidated and consolidating balance sheets of the Consolidated Group as at the end of such fiscal year (beginning with the fiscal year ending December 31, 2005), and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of Ernst & Young or another independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event not later than (i) the date such deliveries are required by the SEC and (ii) forty-five days after the end of each of the first three fiscal quarters of each fiscal year of the Parent (beginning with the fiscal quarter ending September 30, 2005), consolidated and consolidating balance sheets of the Consolidated Group as at the end of such fiscal quarter, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of the Parent's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Parent as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Group in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event no later than 60 days after the end of each fiscal year of the Parent, forecasts prepared by management of the Parent, in form reasonably satisfactory to the Administrative Agent and the Required Lenders, of consolidated balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries on a monthly basis for the immediately following fiscal year (including the fiscal year in which the Revolving Termination Date occurs).

As to any information contained in materials furnished pursuant to *Section 7.02(d)*, the Parent shall not be separately required to furnish such information under *clause (a)* or *(b)* above, but the foregoing shall not be in derogation of the obligation of the Borrowers to furnish the information and materials described in *clauses (a)* and *(b)* above at the times specified therein.

7.02 ***Certificates; Other Information*****.**

Deliver to the Administrative Agent, in form and detail satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in *Section 7.01(a)*, a certificate of its independent certified public accountants certifying such financial statements and stating that in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default or, if any such Default or Event of Default shall exist, stating the nature and status of such event;

(b) concurrently with the delivery of the financial statements referred to in *Sections 7.01(a)* and *(b)*, (beginning with the fiscal quarter ending September 30, 2005), a duly completed Compliance Certificate signed by a Responsible Officer of the Parent (i) setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the financial covenants contained herein, (ii) certifying that no Default or Event of Default exists as of the date thereof (or the nature and extent thereof and proposed actions with respect thereto) and (iii) including a summary of all material changes in GAAP and in the consistent application thereof that impact the calculation of the financial covenants or other amounts hereunder, the effect on the financial covenants or other amounts resulting therefrom, and a reconciliation between calculation of the financial covenants (and determination of the applicable pricing level under the definition of "Applicable Percentage") or such amounts before and after giving effect to such changes;

(c) promptly after any request by the Administrative Agent, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Parent by independent accountants in connection with the accounts or books of the Parent or any Subsidiary, or any audit of any of them;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Parent, and copies of all annual, regular, periodic and special reports and registration statements that the Parent may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto; and

(e) promptly, such additional information regarding the business, financial or corporate affairs of any Credit Party or any Subsidiary of a Credit Party, or compliance with the terms of the Credit Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to *Section 7.01(a)* or *(b)* or *Section 7.02(d)* (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrowers post such documents, or provides a link thereto on the Parent's website on the Internet at the website address listed on *Schedule 11.02* (as may be updated by the Borrowers from time to time); or (ii) on which such documents are posted on the Borrowers' behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: (A) the Borrowers shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrowers to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (B) the Borrowers shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrowers shall be required to provide paper copies of the Compliance Certificates required by *Section 7.02(b)* to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Credit Parties hereby acknowledge that the Administrative Agent will make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Credit Parties hereunder (collectively, the "*Credit Party Materials*") by posting the Credit Party Materials on IntraLinks or another similar electronic system (the "*Platform*").

7.03 *Notification*.

Promptly notify the Administrative Agent:

(a) of the occurrence of any Default or Event of Default;

(b) of any matter that has resulted or would reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrowers or any of their Subsidiaries; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation, investigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws, in each case, only to the extent that such matter has resulted or would reasonably be expected to result in a Material Adverse Effect.

(c) of the occurrence of any ERISA Event; and

(d) of any material change in accounting policies or financial reporting practices by the Borrower or any Subsidiary.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of a Borrower setting forth details of the occurrence referred to therein and stating what action the applicable Borrower has taken and proposes to take with respect thereto. Each notice pursuant to *Section 7.03(a)* shall describe with particularity any and all provisions of this Credit Agreement and any other Credit Document that have been breached.

7.04 ***Payment of Obligations*****.**

Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by each Borrower or such Subsidiary; (b) all lawful claims that, if unpaid, would by law become a Lien upon any material portion of its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

7.05 ***Preservation of Existence, Etc*****.**

(a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization (except in connection with a transaction permitted by *Section 8.04* or *8.05*); (b) take all commercially reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which would reasonably be expected to have a Material Adverse Effect.

7.06 ***Maintenance of Properties*****.**

(a) Maintain, preserve and protect all of its material Property and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted;

(b) make all necessary repairs thereto and renewals and replacements thereof, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect; and

(c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

7.07 ***Maintenance of Insurance*****.**

Maintain in full force and effect with financially sound and reputable insurance companies that are not Affiliates of the Borrowers, insurance with respect to its properties and business against loss or damage of the

kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons (*provided* that the Consolidated Group may self-insure to the extent customary among companies engaged in similar businesses) and identifying the Administrative Agent as sole loss payee, with respect to flood hazard and casualty insurance, and as additional insured, with respect to liability insurance and providing for not less than thirty days' prior notice to the Administrative Agent of the termination, lapse or cancellation of any such insurance.

7.08 ***Compliance with Laws; ERISA Compliance*.**

(a) Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (ii) the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

(b) Do, and cause each of its ERISA Affiliates to do, each of the following:

(i) maintain each Plan, in all material respects, in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other applicable Law;

(ii) cause each Plan that is qualified under Section 401(a) of the Internal Revenue Code to maintain such qualification; and

(iii) make all required contributions to any Plan subject to Section 412 of the Internal Revenue Code.

7.09 ***Books and Records*.**

Maintain (a) proper books of record and account, in which true and correct entries in conformity with GAAP shall be made of all financial transactions and matters involving the assets and business of the Borrowers or such Subsidiary, as the case may be, and (b) such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Borrowers or such Subsidiary.

7.10 ***Inspection Rights*.**

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to conduct field audits, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrowers and at such reasonable times during normal business hours one time each fiscal year, upon reasonable advance notice to the Borrowers; *provided*, however, that when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice.

7.11 ***Use of Proceeds*.**

Use the proceeds of the Credit Extensions (a) to refinance existing Indebtedness, (b) to finance a dividend distribution by the Foreign Borrowers in an amount up to $170 million, (c) to provide credit support for the Albuquerque IRB Financing, (d) to finance working capital, capital expenditures and other lawful corporate purposes, including Acquisitions and Restricted Payments otherwise permitted hereunder and (e) to pay fees and expenses relating the establishment of credit facilities under the Credit Documents.

7.12 ***Joinder of Subsidiaries as Guarantors*.**

(a) *Domestic Revolving Obligations*. In the case of the Domestic Borrowers and their Subsidiaries, where any Domestic Subsidiary of the Domestic Borrowers that is not a Guarantor hereunder (a "*Non-Guarantor Domestic Subsidiary*") shall at any time:

(i) represent more than 3% of the consolidated assets or account for more than 3% of consolidated revenues for the Consolidated Group, or

(ii) together with all other such Non-Guarantor Domestic Subsidiaries as a group, represent more than 15% of the consolidated assets or account for more than 15% of the Consolidated revenues for the Consolidated Group,

then, in any such instance, the Domestic Borrowers will promptly, but in any event within thirty (30) days of making such determination, cause the joinder of such Domestic Subsidiaries as Domestic Guarantors hereunder pursuant to Joinder Agreements (or such other documentation reasonably acceptable to the Administrative Agent) accompanied by Organization Documents and favorable opinions of counsel to such Domestic Subsidiary, all in form and substance reasonably satisfactory to the Administrative Agent, such that after giving effect thereto the Non-Guarantor Domestic Subsidiaries will not, individually or as a group, exceed the foregoing threshold requirements.

(b) *Foreign Loan Obligations*. In the case of any Foreign Borrower and its Foreign Subsidiaries, where any Foreign Subsidiary of a Foreign Borrower is not a Guarantor hereunder (a "*Non-Guarantor Foreign Subsidiary*"), such Foreign Borrower may, at its discretion, cause the joinder of such Foreign Subsidiary as a Foreign Guarantor hereunder pursuant to a Joinder Agreement (or such other documentation reasonably acceptable to the Administrative Agent) accompanied by Organization Documents and favorable opinions of counsel to such Foreign Subsidiary, all in form and substance reasonably satisfactory to the Administrative Agent, such that after giving effect thereto, such Non-Guarantor Foreign Subsidiary shall become a Foreign Guarantor.

(c) *Guaranties and Support Obligations in Respect of other Funded Debt*. The Parent will not permit any of its Subsidiaries to give a guaranty or other Support Obligation in respect of Funded Debt, unless (i) the guaranty or other Support Obligation is otherwise permitted hereunder and (ii) such Subsidiary shall have given a guaranty of the Obligations hereunder on an equal and ratable basis by becoming a Guarantor pursuant to the terms hereof.

7.13 ***Pledge of Capital Stock*.**

(a) Pledge or cause to be pledged to the Administrative Agent, to secure the Obligations (including the Foreign Obligations), (i) 100% of the issued and outstanding Capital Stock of each Domestic Subsidiary within thirty days (or such later time designated in writing by the Administrative Agent) of the formation, acquisition or other receipt of such interests and (ii) 65% of the issued and outstanding Capital Stock of each First-Tier Foreign Subsidiary within sixty days (or such later time designated in writing by the Administrative Agent) of its formation, acquisition or other receipt of such interests, in each case pursuant to the Domestic Pledge Agreement or pledge joinder agreements, together with opinions of counsel and any filings and deliveries reasonably requested by the Administrative Agent in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Administrative Agent; and

(b) Pledge or cause to be pledged to the Foreign Collateral Agent, to secure the Foreign Obligations, the remaining 35% of the issued and outstanding Capital Stock of each First-Tier Foreign Subsidiary within sixty days (or such later time designated in writing by the Foreign Collateral Agent) of its formation, acquisition or other receipt of such interests pursuant to the Foreign Pledge Agreement or pledge joinder agreements, together with opinions of counsel and any filings and deliveries requested by the Administrative Agent in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Foreign Collateral Agent;

provided that the requirement pursuant to *clause (a)(ii)* for the pledge of not more than 65% of the Capital Stock in each First-Tier Foreign Subsidiary to secure the Obligations is intended to avoid treatment of the undistributed earnings of a Foreign Subsidiary as a deemed dividend to its United States parent for United States federal income tax purposes. Accordingly, notwithstanding the provisions of *clauses (a)* and *(b)* above, each Credit Party shall, at the request of the Administrative Agent and after consultation with the Borrower, pledge or cause to be pledged any greater percentage of its interest in a First-Tier Foreign Subsidiary that, as the result of a change in Law, (A) would not reasonably be expected to cause the undistributed earnings of such Foreign Subsidiary to be treated as a deemed dividend to the United States parent of such Foreign Subsidiary, as determined for United States federal income tax purposes, and (B) would not otherwise reasonably be expected to result in material adverse tax consequences to such Foreign Subsidiary or its United States parent, to secure the Obligations, and shall pledge any remaining interests therein to secure the Foreign Obligations.

7.14 ***Pledge of Other Property*****.**

At the request of the Administrative Agent, mortgage, pledge and grant a security interest in all of its owned and leased Property (except (a) Excluded Property and (b) as otherwise set forth in *Section 7.13* with respect to Capital Stock), within thirty days of the acquisition thereof (in the case of any such personal property) and within ninety days (or such later time designated in writing by the Administrative Agent) of the acquisition thereof (in the case of any such real property), in each case pursuant to such mortgage instruments, pledge and security agreements, joinder agreements or other documents, together with opinions of counsel and any filings and deliveries reasonably requested by the Administrative Agent in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Administrative Agent, with respect to the Domestic Credit Parties, to secure the Obligations (including the Foreign Obligations), and with respect to the Foreign Credit Parties, to secure the Foreign Obligations.

7.15 ***Landlord Consents*****.**

Use reasonable commercial efforts to promptly obtain landlord consents, estoppel letters or waivers in respect of Collateral held on leased premises, as reasonably requested by the respective Collateral Agent.

7.16 ***Further Assurances Regarding Certain Collateral*****.**

(a) *Certain Title Policy Endorsements*. With respect to the title policy required under *Section 5.03(c)* in connection with the Mortgage on the Albuquerque Project's Mortgaged Property, deliver to the Domestic Collateral Agent, within 150 days after receipt of the occupancy certificate for the manufacturing facility located at such Mortgaged Property (or such later date as may be agreed to by the Domestic Collateral Agent), endorsements, in form and substance satisfactory to the Domestic Collateral Agent, that remove exceptions related to any carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens.

(b) *Certain Spanish Law Documents*. Deliver to the Foreign Collateral Agent within 45 days of the Closing Date (or such later date as may be agreed to by the Foreign Collateral Agent), (i) a Spanish law Pledge of Shares, by TWH, as pledgor of 65% of the Capital Stock in TWHSL, in favor of the Domestic Collateral Agent, to secure the Obligations, (ii) a Spanish law Pledge of Shares, by TWH, as pledgor of 35% of the Capital Stock in TWHSL, in favor of the Foreign Collateral Agent, to secure the Foreign Obligations and (iii) a Spanish law Guaranty, by TWHSL, of the Foreign Obligations.

(c) *Mortgage with Respect to the Albuquerque Project*. Unless a Mortgage with respect to the real property comprising the Albuquerque Project has been provided to the Administrative Agent pursuant to the terms and conditions of *Section 5.03(c)* within 60 days of the Closing Date, the Domestic Borrowers shall deliver to the Administrative Agent a Mortgage, together with each of the items required by *Section 5.01(g)*, with respect to such property, each in form and substance reasonably satisfactory to the Administrative Agent, within 75 days of the Closing Date.

(d) *Pledge of Intellectual Property by Foreign Credit Parties*. Except as otherwise agreed by the Foreign Collateral Agent, within thirty (30) days of the Closing Date (or such later date as agreed by the Foreign Collateral Agent), Dan-Foam will, and will cause TD to, take commercially reasonable efforts to pledge and grant a security interest in any Intellectual Property owned by DF or TD registered in the United States or elsewhere and will provide corrective filings, and otherwise provide assistance, to reflect that any such Intellectual Property is pledged to secure the Foreign Obligations, in each case pursuant to such joinder agreements, security agreements or other agreements and such notices and filings, together with opinions of counsel and other deliveries as may be reasonably requested by the Foreign Collateral Agent, in each case in form and substance satisfactory to the Foreign Collateral Agent in its reasonable discretion.

(e) *Pledge of Other Property by Foreign Credit Parties* Except as otherwise agreed by the Foreign Collateral Agent, within thirty (30) days of the acquisition thereof in the case of material personal property and ninety (90) days of the acquisition (or such later date as agreed by the Foreign Collateral Agent) thereof in the case of material real property, Dan-Foam will, and will cause TD to, take commercially reasonable efforts to mortgage, pledge and grant a security interest in all such property located or registered in the United States or elsewhere (other than (i) Excluded Property and (ii) Capital Stock in Subsidiaries that is dealt with in *Section 7.13*), in each case pursuant to such mortgage instruments, pledge and security agreements, joinder agreements or other documents to secure the Foreign Obligations, together with opinions of counsel and any filings and deliveries as may be reasonably requested by the Foreign Collateral Agent in connection therewith, in each case in form and substance satisfactory to the Foreign Collateral Agent in its reasonable discretion.

ARTICLE VIII

NEGATIVE COVENANTS

Until the Loan Obligations shall have been paid in full or otherwise satisfied, and the Commitments hereunder shall have expired or been terminated, the Credit Parties will not, and will not permit any of their Subsidiaries to:

8.01 *Liens*.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Credit Document securing the Loan Obligations;

(b) Liens in favor of a Lender or any of its Affiliates pursuant to a Swap Contract or Treasury Management Agreement permitted hereunder, but only to the extent that (i) the obligations under such Swap Contract or Treasury Management Agreement are permitted under *Section 8.03*, (ii) such Liens are on the same collateral that secures the Loan Obligations and (iii) the obligations under such Swap Contract or Treasury Management Agreement and the Loan Obligations share *pari passu* (subject to *Section 9.03*) in the collateral that is subject to such Liens;

(c) Liens existing on the date hereof and listed on *Schedule 8.01* and any renewals or extensions thereof, *provided* that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by *Section 8.03(b)*;

(d) Liens for taxes not yet due or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business that are not overdue for a period of more than sixty days or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(f) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(g) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) easements, rights-of-way, restrictions and other similar encumbrances affecting real property that, in the aggregate, are not substantial in amount, and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(i) Liens securing judgments for the payment of money not constituting an Event of Default under *Section 9.01(h)* or securing appeal or other surety bonds related to such judgments;

(j) Liens securing, or in respect of, obligations under capital leases or Synthetic Leases and purchase money obligations for fixed or capital assets; *provided* that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(k) Liens on the Albuquerque Facility and the property located thereon or otherwise relating thereto securing the Albuquerque Series 2005A Bonds permitted under *Section 8.03(f)*;

(l) Liens on property or assets acquired in connection with a Permitted Acquisition, *provided* that (i) the indebtedness secured by such Liens is permitted under *Section 8.03*, and (ii) the Liens are not incurred in connection with, or in contemplation or anticipation of, the acquisition, such Liens are not "blanket liens" and such Liens do not attach or extend to any other property or assets; and

(m) Liens on equipment, fixtures or other property for the Albuquerque Facility acquired, constructed or installed with Indebtedness permitted under *Section 8.03(g)*; *provided* that (i) such Liens do not secure the Albuquerque Series 2005B Bonds, which shall be unsecured, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (iii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition.

8.02 ***Investments*****.**

Make or permit to exist any Investments, except:

(a) cash and Cash Equivalents;

(b) Investments (including intercompany Investments) existing on the date hereof and listed on *Schedule 8.02* and Investments in Self-Funded Bonds in connection with the Albuquerque IRB Financing;

(c) to the extent not prohibited by applicable Law, advances to officers, directors and employees of the Borrowers and their respective Subsidiaries in an aggregate amount not to exceed $500,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Investments by members of the Consolidated Group in and to the Domestic Borrowers and their wholly-owned Domestic Subsidiaries;

(f) Investments by the Domestic Borrowers and their wholly-owned Domestic Subsidiaries in and to (i) the Parent Guarantors and (ii) the Foreign Borrowers and their wholly-owned Subsidiaries that are organized under the laws of an Approved Jurisdiction and are Guarantors hereunder, in an aggregate amount not to exceed $5 million;

(g) Investments by the Parent Guarantors and their Subsidiaries (other than the Domestic Borrowers and their Subsidiaries) in and to the Foreign Borrowers and their wholly-owned Subsidiaries that are organized under the laws of an Approved Jurisdiction and are Guarantors hereunder;

(h) Investments by and between the Foreign Borrowers and their wholly-owned Subsidiaries that are organized under the laws of an Approved Jurisdiction and are Guarantors hereunder;

(i) Investments by (i) the Parent Guarantors and (ii) the Foreign Borrowers and their wholly-owned Subsidiaries that are organized under the laws of an Approved Jurisdiction and are Guarantors hereunder, on the one hand, in and to Subsidiaries of the Foreign Borrowers that are either not organized under the laws of an Approved Jurisdiction or are not Guarantors hereunder, or both, on the other hand, in aggregate principal amount not to exceed $10 million;

(j) Investments by and between Subsidiaries of the Foreign Borrowers that are either not organized under the laws of an Approved Jurisdiction or are not Guarantors hereunder, or both;

(k) Support Obligations permitted by *Section 8.03*;

(l) Investments made as a part of Permitted Acquisitions;

(m) Investments of a nature not contemplated in the foregoing clauses of this Section, in an aggregate amount not to exceed $10 million (and, in the case of case of Subsidiaries, additional investment amounts, but only to the extent required to meet minimum capitalization requirements under local law);

(n) Investments consisting of capital contributions (i) by TW to Tempur France Sarl and Tempur Italia Srl, and (ii) by Dan-Foam ApS and Newco to Subsidiaries of Dan-Foam ApS; *provided* that, in each case (x) such capital contributions as received shall be used to pay down intercompany payables owed to Dan-Foam or Newco within two weeks of receipt of such capital contributions, and (y) the aggregate amount of such capital contributions made and not applied pursuant to the foregoing *clause (x)* at any one time shall not exceed $3.5 million in the aggregate; and

(o) Investments not otherwise permitted hereunder, *provided* that, in any such case, (i) no Default or Event of Default shall exist on the date of any such Investment and (ii) the Consolidated Group shall be, at the time of such Investment, in compliance with the financial covenants hereunder after giving effect thereto on a Pro Forma Basis.

8.03 *Indebtedness*.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Credit Documents;

(b) Indebtedness outstanding on the Closing Date and listed on *Schedule 8.03* and any refinancings, refundings, renewals or extensions thereof; *provided* that (i) the terms of any such refinancing, refunding, renewal or extension shall be on terms consistent with prevailing market standards, but not, in any event, materially less favorable terms

than existed under the Indebtedness being refinanced, refunded, renewed or extended and (ii) the principal amount of such Indebtedness shall not be increased, except to include any unfunded commitments and reasonable costs and expenses in connection therewith, including premiums and transaction costs;

(c) obligations (contingent or otherwise) of any member of the Consolidated Group existing or arising under any Swap Contract, *provided* that such obligations are entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view";

(d) intercompany Indebtedness among members of the Consolidated Group to the extent permitted by *Section 8.02*;

(e) Indebtedness (including Indebtedness under capital leases, Synthetic Leases obligations) and purchase money obligations incurred to provide all or a portion of the purchase price (or cost of construction or acquisition), in each case, for capital assets and refinancings, refundings, renewals or extensions thereof, *provided* that the aggregate principal amount of all such Indebtedness shall not at any time exceed $10 million;

(f) Indebtedness under the Albuqurque IRB Financing in an aggregate principal amount not to exceed $100 million and any refinancings, refundings, renewals and extensions thereof;

(g) Indebtedness to finance the acquisition, construction, installation of fixtures and equipment for the Albuqurque Facility in an aggregate principal amount not to exceed $15 million and any refinancings, refundings, renewals and extensions thereof;

(h) other Funded Debt of the Credit Parties, *provided* that in any such case, the Consolidated Group shall, at the time of incurrence of such Funded Debt, be in compliance with the financial covenants hereunder after giving effect thereto on a Pro Forma Basis;

(i) Support Obligations by members of the Consolidated Group in respect of Indebtedness otherwise permitted hereunder; and

(j) other Funded Debt not contemplated in the foregoing clauses of this Section in an aggregate principal amount not to exceed $5 million at any time.

8.04 ***Mergers and Dissolutions*****.**

Merge, dissolve, liquidate, consolidate with or into another Person, except that, so long as no Default or Event of Default exists or would result therefrom, (a) any member of the Consolidated Group other than the Borrowers and the Parent may be dissolved or liquidated, (b) if a Domestic Borrower is party to a transaction of merger or consolidation, it shall be the surviving entity or the surviving entity shall be an entity organized and existing under the laws of the United States or a state or commonwealth thereof, (c) if a Foreign Borrower is party to a transaction of merger of consolidation, it shall be the surviving entity or the surviving entity shall be an entity organized and existing under an Approved Jurisdiction, and (d) if the Parent is a party to a transaction of merger or consolidation, it shall be the surviving entity.

8.05 ***Dispositions*****.**

Make any Disposition or enter into any agreement to make any Disposition to or in favor of any Person, except:

(a) in the case of Dispositions between and among other members of the Consolidated Group, (i) as between and among the Domestic Borrowers and their Subsidiaries, Dispositions may be made between and among themselves, (ii) as between and among the Foreign Borrowers and their Subsidiaries, Dispositions may be made

between and among themselves, and (iii) as between and among the Domestic Borrowers and their Subsidiaries, on the one hand, and the Foreign Borrowers and their Subsidiaries, on the other hand, the Foreign Borrowers and their Subsidiaries, as transferors, may make Dispositions to the Domestic Borrowers and their Subsidiaries, as transferees;

(b) other Dispositions by the Consolidated Group, *provided* that (i) at the time of such Disposition, no Default or Event of Default shall exist or would result from such Disposition and (ii) the aggregate book value of all property Disposed of in reliance on this *clause (b)* in any fiscal year shall not exceed an amount equal to ten percent (10%) of assets of the Consolidated Group; and

(c) the Dan-Foam De-merger; *provided* that (i) the Dan-Foam De-merger shall not impair any Liens of the Foreign Collateral Agent for the benefit of the holders of the Foreign Obligations under the Security Documents, (ii) Newco shall become a Guarantor of the Foreign Obligations, and (iii) the Capital Stock of Newco shall be pledged to the Foreign Collateral Agent for the benefit of the holders of the Foreign Obligations.

provided, however, that any such Disposition permitted by *clauses (a)* and (b) above shall be for fair market value, and any Disposition permitted by *clause (c)* shall be in accordance with Danish tax authority guidelines.

8.06 ***Restricted Payments*****.**

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, so long as no Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) Subsidiaries of the Parent may pay dividends and make distributions in respect of their Capital Stock;

(b) the Parent may declare and make dividend payments or other distributions payable solely in the common stock or other common equity interests of such Person;

(c) the Parent may purchase, redeem or otherwise acquire shares of its common stock or other common equity interests or warrants or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common equity interests; and

(d) the Parent may make other Restricted Payments (including prepayment or purchase of Subordinated Debt, together with any premium thereon), *provided* that (i) no Default or Event of Default shall exist immediately before or after giving effect thereto, and (ii) the Consolidated Group shall be, at the time of such Restricted Payment, in compliance with the financial covenants hereunder after giving effect thereto on a Pro Forma Basis.

8.07 ***Change in Nature of Business*****.**

Engage in any material line of business substantially different from those lines of business conducted by the Consolidated Group on the date hereof or any business substantially related or incidental thereto.

8.08 ***Change in Fiscal Year*****.**

Change its fiscal year without the prior consent of the Required Lenders.

8.09 ***Transactions with Affiliates*****.**

Enter into any transaction of any kind with any Affiliate of the Borrowers, whether or not in the ordinary course of business, other than (a) transactions on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a

comparable arm's length transaction with a Person other than an Affiliate, (b) payment of reasonable compensation (including reasonable bonus and other reasonable incentive arrangements) to officers and employees, (c) reasonable directors fees, (d) Restricted Payments permitted pursuant to *Section 8.06*, (e) reimbursement of employee travel and lodging costs and other business expenses incurred in the ordinary course of business, (f) Investments permitted by *Section 8.02*, (g) participation by the Foreign Subsidiaries in the cash pooling system pursuant to the Overdraft Documents and (h) transfers pursuant to the Dan-Foam De-merger; *provided* that any such transfer is in accordance with Danish tax authority guidelines.

8.10 ***Use of Proceeds*.**

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

8.11 ***Financial Covenants*.**

(a) *Consolidated Fixed Charge Coverage Ratio*. Permit the Consolidated Fixed Charge Coverage Ratio as of the end of any fiscal quarter to be less than 1.25:1.0.

(b) *Consolidated Leverage Ratio*. Permit the Consolidated Leverage Ratio as of the end of any fiscal quarter to be greater than 2.75:1.0.

8.12 ***Issuance of Non-Voting Stock by Foreign Subsidiaries*.**

Permit any First-Tier Foreign Subsidiary to issue Capital Stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) without the prior written consent of the Administrative Agent.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

9.01 ***Events of Default*.**

Any of the following shall constitute an Event of Default:

(a) *Non-Payment*. The Borrowers or any other Credit Party fails to pay (i) when and as required to be paid herein, and in the currency required hereunder, any amount of principal of any Loan or any L/C Obligation, or (ii) within three days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five days after the same becomes due, any other amount payable hereunder or under any other Credit Document; or

(b) *Specific Covenants*. The Borrowers or any other Credit Party fails to perform or observe any term, covenant or agreement contained in any of *Section 7.01*, *7.02*, *7.05*, *7.10*, *7.11*, *7.12*, *7.13* or *7.14* or *Article VIII*; or

(c) *Other Defaults*. The Borrower or any other Credit Party fails to perform or observe any other covenant or agreement (not specified in *subsection (a)* or *(b)* above) contained in any Credit Document on its part to be performed or observed and such failure continues for thirty days; or

(d) *Representations and Warranties*. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Credit Party herein, in any other Credit Document, or in any document delivered in connection herewith or therewith shall be false or misleading when made or deemed made; or

(e) *Cross-Default*. (i) Any member of the Consolidated Group (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Support Obligations (other than Indebtedness hereunder and Indebtedness under Swap Contracts, but including, specifically, without limitation, the payment obligations owing under the Lease Agreement referenced and defined in the Albuquerque Bond Indenture) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $10 million, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Support Obligations or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Support Obligations (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Support Obligations to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrower or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Borrower or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Borrower or such Subsidiary as a result thereof is greater than $10 million; or

(f) *Insolvency Proceedings, Etc*. Any member of the Consolidated Group institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty calendar days, or an order for relief is entered in any such proceeding; or

(g) *Inability to Pay Debts; Attachment*. (i) Any member of the Consolidated Group becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty days after its issue or levy; or

(h) *Judgments*. There is entered against any member of the Consolidated Group (i) a final judgment or order for the payment of money in an aggregate amount exceeding $10 million (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of ten consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) *ERISA*. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or would reasonably be expected to result in liability of a Credit Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of $10 million, or (ii) a Credit Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of $10 million; or

(j) *Invalidity of Credit Documents*. Any Credit Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder 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 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

(k) *Change of Control*. There occurs any Change of Control.

9.02 *Remedies Upon Event of Default*.

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitments of the Lenders to make Loans and the obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Credit Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Foreign Borrowers Cash Collateralize the Foreign L/C Obligations and that the Domestic Borrowers Cash Collateralize the Domestic L/C Obligations (in each case, in an amount equal to the then Outstanding Amount thereof);

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it or to the Lenders under the Credit Documents or applicable Law; and

(e) direct the Domestic L/C Issuer to direct the trustee under the Albuquerque Bond Indenture to accelerate the principal and interest due on the Albuquerque Bonds and to draw on the IRB Letter of Credit, in accordance with the provisions of the Albuquerque Bond Indenture, and thereupon direct the trustee under the under Albuquerque Bond Indenture to either redeem or purchase the Albuquerque Bonds, as provided in the Albuquerque Bond Indenture;

provided, however, that upon the occurrence of an Event of Default under *Section 9.01(f)* or *(g)*, the obligation of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

9.03 *Application of Funds*.

After the exercise of remedies provided for in *Section 9.02* (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to *Section 9.02*), any amounts received on account of the Obligations shall be applied, subject to *Section 1.10*, by the Administrative Agent in the following order:

(a) any amounts received on account of the Obligations (other than the Foreign Obligations) shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including reasonable attorneys' fees and disbursements and amounts payable under *Article III*) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including reasonable attorneys' fees and disbursements and amounts payable under *Article III*), ratably among the Lenders in proportion to the amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and L/C Borrowings, ratably among the Lenders in proportion to the respective amounts described in this clause *Third* payable to them;

Fourth, to (i) payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and other Obligations, (ii) payment of breakage, termination or other amounts owing in respect of any Swap Contract between any Credit Party and any Lender, or any Affiliate of a Lender, to the extent such Swap Contract is permitted hereunder, (iii) payments of amounts due under any Treasury Management Agreement between any Credit Party and any Lender, or any Affiliate of a Lender and (iv) the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of the L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among such parties in proportion to the respective amounts described in this clause *Fourth* payable to them;

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law;

provided that, subject to *Section 2.03*, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause *Fourth* above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above; and

(b) any amounts received on account of the Foreign Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Foreign Obligations constituting fees, indemnities, expenses and other amounts (including reasonable attorneys' fees and disbursements and amounts payable under *Article III*) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Foreign Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including reasonable attorneys' fees and disbursements and amounts payable under *Article III*), ratably among the Lenders in proportion to the amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Foreign Obligations constituting accrued and unpaid interest on the Loans and other Foreign Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause *Third* payable to them;

Fourth, to (i) payment of that portion of the Foreign Obligations constituting unpaid principal of the Loans and other Foreign Obligations, (ii) payment of breakage, termination or other amounts owing in respect of any Swap Contract with respect to the Foreign Obligations between any Credit Party and any Lender, or any Affiliate of a Lender, to the extent such Swap Contract is permitted hereunder, (iii) payments of amounts due under any Treasury Management Agreement with respect to the Foreign Obligations between any Credit Party and any Lender, or any Affiliate of a Lender and (iv) the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of the L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among such parties in proportion to the respective amounts described in this clause *Fourth* payable to them;

Last, the balance, if any, after all of the Foreign Obligations have been indefeasibly paid in full, to the Foreign Borrowers or as otherwise required by Law;

provided that, subject to *Section 2.03*, amounts used to Cash Collateralize the aggregate undrawn amount of Foreign Letters of Credit pursuant to clause *Fourth* above shall be applied to satisfy drawings under such Foreign Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Foreign Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Foreign Obligations, if any, in the order set forth above.

9.04 ***Collection Allocation Mechanism*.**

(a) On the CAM Exchange Date, the Lenders shall automatically and without further action be deemed to have exchanged interests in the Specified Obligations under the Tranches (and participation interests in Letters of Credit) such that, in lieu of the interest of each Lender in the Specified Obligations under each Tranche in which it shall participate as of such date (including the principal, reimbursement, interest and fee obligations of each Credit Party in respect of each such Tranche) and, if such Lender holds a Revolving Commitment as of such date, such Lender's participation interests in Letters of Credit, such Lender shall own an interest equal to such Lender's CAM Percentage in the Specified Obligations under each of the Tranches (including the principal, reimbursement, interest and fee obligations of each Credit Party in respect of each such Tranche) and hold a participation interest in each Letter of Credit equal to its CAM Percentage thereof. Each Lender, each Participant, each Credit Party and the Administrative Agent hereby consents and agrees to the CAM Exchange. Each Lender and each Credit Party hereby agrees from time to time to execute and deliver to the Administrative Agent all such promissory notes and other instruments and documents as the Administrative Agent shall reasonably request to evidence and confirm the respective interests and obligations of the Lenders after giving effect to the CAM Exchange, and each Lender agrees to surrender any promissory notes originally received by such Lender to the Administrative Agent against delivery of any promissory notes so executed and delivered; *provided*, *however*, that the failure of any Credit Party to execute and deliver or of any Lender to accept any such promissory note, instrument or document shall not affect the validity or effectiveness of the CAM Exchange. On the CAM Exchange Date, each Lender whose funded Exposures after giving effect to the CAM Exchange shall exceed its funded Exposures before giving effect thereto shall pay to the Administrative Agent the amount of such excess in the applicable currency or currencies (or, if requested by the Administrative Agent, in Dollars), and the Administrative Agent shall pay to each of the Lenders, out of the amount so received by it, the amount by which such Lender's funded Exposures before giving effect to the CAM Exchange exceeds such funded Exposures after giving effect to the CAM Exchange.

(b) Each Lender's obligation to exchange its interests pursuant to the CAM Exchange shall be absolute and unconditional and shall not be affected by any circumstance including, without limitation, (i) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against any other Lender, any Credit Party or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default, (iii) any adverse change in the condition (financial or otherwise) of any member of the Consolidated Group or any other Person, (iv) any breach of this Credit Agreement by any Credit Party, any Lender or any other Person, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

ARTICLE X

ADMINISTRATIVE AGENT

10.01 ***Appointment and Authorization of Administrative Agent*.**

(a) Each of the Lenders and the L/C Issuers hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and the Credit Parties shall not have rights as a third party beneficiary of any of such provisions.

(b) Each Lender hereby irrevocably appoints, designates and authorizes (i) the Domestic Collateral Agent to take such action on its behalf under the provisions of this Credit Agreement and each Domestic Collateral Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Credit Agreement or any Domestic Collateral Document, together with such powers as are reasonably incidental thereto and (ii) the Foreign Collateral Agent to take such action on its behalf under the provisions of

this Credit Agreement and each Foreign Collateral Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Credit Agreement or any Foreign Collateral Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any Collateral Document, the Collateral Agents shall not have any duties or responsibilities, except those expressly set forth herein or therein, nor shall the Collateral Agents have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Credit Agreement or any Collateral Document or otherwise exist against either Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the Collateral Documents with reference to the applicable Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Each Collateral Agent shall act on behalf of the Lenders with respect to the Collateral and the Collateral Documents, and each Collateral Agent shall have all of the benefits and immunities (i) provided to the Administrative Agent under the Credit Documents with respect to any acts taken or omissions suffered by either Collateral Agent in connection with any Collateral or the Collateral Documents as fully as if the term "Administrative Agent" as used in such Credit Documents included the applicable Collateral Agent with respect to such acts or omissions, and (ii) as additionally provided herein or in the Collateral Documents with respect to the Collateral Agents.

10.02 ***Swiss and German Power of Attorney*****.**

Each Foreign Lender hereby authorizes and empowers the European Collateral Agent with the right of delegation and substitution and under relief from any restrictions (including but not limited to restrictions of Section 181 German Civil Code) to execute on its sole signature on behalf of such Foreign Lender any and all agreements, sub powers-of-attorney to third persons or other instruments and take such actions, make all statements and accept all declarations deemed necessary or useful in order to effect any Collateral on behalf of such Foreign Lender.

10.03 ***Rights as a Lender*****.**

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

10.04 ***Exculpatory Provisions*****.**

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in *Sections 11.01* and *9.02*) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or an L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Credit Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Administrative Agreement, any other Credit Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in *Article V* or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.05 ***Reliance by Administrative Agent.***

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or an L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.06 ***Delegation of Duties*****.**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

10.07 ***Resignation of the Administrative Agent*****.**

The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. 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 and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) 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 the L/C Issuers 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 (2) 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 each L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. 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 Section). The fees payable by the Borrower 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 11.04* 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.

10.08 ***Non-Reliance on Administrative Agent and Other Lenders*.**

Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Credit Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Credit Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

10.09 ***No Other Duties*.**

Anything herein to the contrary notwithstanding, none of the Sole Lead Arranger, Sole Book Manager, U.S Co-Agent or European Co-Agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Credit Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an L/C Issuer hereunder.

10.10 ***Administrative Agent May File Proofs of Claim*.**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations (other than obligations under Swap Contracts or Treasury Management Agreements to which the Administrative Agent is not a party) that are owing and unpaid and to file

such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under *Sections 2.09* and *11.04*) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under *Sections 2.09* and *11.04*.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or either L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

10.11 ***Collateral and Guaranty Matters*****.**

The Lenders and the L/C Issuers irrevocably authorize the Administrative Agent and the respective Collateral Agent, at its option and in its discretion:

(a) to release any Lien on any property granted to or held by the applicable Collateral Agent under any Credit Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Credit Document, or (iii) subject to *Section 11.01*, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate any Lien on any property granted to or held by the applicable Collateral Agent under any Credit Document to the holder of any Lien on such property that is permitted by *Section 8.01(j)*; and

(c) to release any Guarantor from its obligations under any Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent or the applicable Collateral Agent at any time, the Required Lenders will confirm in writing the authority of the applicable Collateral Agent to release or subordinate its interest in particular property and of the Administrative Agent to release any Guarantor from its obligations hereunder pursuant to this *Section 10.11*.

ARTICLE XI

MISCELLANEOUS

11.01 ***Amendments, Etc.***

No amendment or waiver of, or any consent to deviation from, any provision of this Credit Agreement or any other Credit Document shall be effective unless in writing and signed by the Borrower or the applicable Credit Party, as the case may be, and the Required Lenders and acknowledged by the Administrative Agent, and each such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given; *provided*, however, that:

(a) unless also consented to in writing by each Lender directly affected thereby, no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to *Section 9.02*), it being understood that the amendment or waiver of an Event of Default or a mandatory reduction or a mandatory prepayment in Commitments shall not be considered an increase in Commitments,

(ii) waive non-payment or postpone any date fixed by this Credit Agreement or any other Credit Document for any payment of principal, interest, fees or other amounts due to any Lender hereunder or under any other Credit Document,

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to *clause (v)* of the last proviso of this *Section 11.01*) any fees or other amounts payable hereunder or under any other Credit Document; *provided*, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder,

(iv) change any provision of this Credit Agreement regarding pro rata sharing or pro rata funding with respect to (A) the making of advances (including participations), (B) the manner of application of payments or prepayments of principal, interest, or fees, (C) the manner of application of reimbursement obligations from drawings under Letters of Credit, or (D) the manner of reduction of commitments and committed amounts,

(v) amend *Section 1.06* or the definition of "Alternative Currency" without the written consent of each Lender;

(vi) change any provision of this *Section 11.01(a)* or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, or

(vii) release all or substantially all of the Guarantors from their obligations under the Credit Documents (other than as provided herein or as appropriate in connection with transactions permitted hereunder);

(b) unless also signed by the Required Domestic Revolving Lenders, no such amendment, waiver or consent shall:

(i) waive any Default or Event of Default for purposes of *Section 5.02*,

(ii) amend or waive any mandatory prepayment on Domestic Revolving Obligations under *Section 2.06(b)* or the manner of application thereof to the Domestic Revolving Obligations under *Section 2.06(c)*, or

(iii) amend or waive the provisions of *Section 5.02* (Conditions to all Credit Extensions), *Section 7.12* (Joinder of Subsidiaries as Guarantors), *Article VIII* (Negative Covenants), *Article IX* (Events of Default and Remedies), this *Section 11.01(b)* or the definition of "Required Revolving Lenders";

(c) unless also signed by the Required Foreign Revolving Lenders, no such amendment, waiver or consent shall:

(i) waive any Default or Event of Default for purposes of *Section 5.02*,

(ii) amend or waive any mandatory prepayment on Foreign Revolving Obligations under *Section 2.06(b)* or the manner of application thereof to the Foreign Revolving Obligations under *Section 2.06(c)*, or

(iii) amend or waive the provisions of *Section 5.02* (Conditions to all Credit Extensions), *Section 7.12* (Joinder of Subsidiaries as Guarantors), *Article VIII* (Negative Covenants), *Article IX* (Events of Default and Remedies), this *Section 11.01(c)* or the definition of "Required Revolving Lenders";

(d) unless also signed by the Foreign Term Lenders, no such amendment, waiver or consent shall:

(i) amend or waive any mandatory prepayment on the Foreign Term Loan under *Section 2.06(b)* or the manner of application thereof to the Foreign Term Loan under *Section 2.06(c)*, or

(ii) amend or waive the provisions of this *Section 11.01(d)* or the definition of "Foreign Term Lenders";

(e) unless also consented to in writing by the effected L/C Issuer, no such amendment, waiver or consent shall affect the rights or duties of the such L/C Issuer under this Credit Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it;

(f) unless also consented to in writing by the effected Swingline Lender, no such amendment, waiver or consent shall affect the rights or duties of such Swingline Lender under this Credit Agreement;

(g) unless also consented to in writing by the Administrative Agent, no such amendment, waiver or consent shall affect the rights or duties of the Administrative Agent under this Credit Agreement or any other Credit Document; and

(h) unless also consented to in writing by the Domestic Collateral Agent or the Foreign Collateral Agent, respectively, no such amendment, waiver or consent shall affect the rights or duties of the Domestic Collateral Agent or the Foreign Collateral Agent, respectively, under this Credit Agreement or any other Credit Document;

provided however, that notwithstanding anything to the contrary contained herein, (i) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender, (ii) each Lender is entitled to vote as such Lender sees fit on any bankruptcy or insolvency reorganization plan that affects the Loans, (iii) each Lender acknowledged that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein, (iv) the Required Lenders may consent to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding, and (v) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

11.02 *Notices; Effectiveness; Electronic Communication*.

(a) *Notices Generally*. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection *(b)* 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, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrowers, the Administrative Agent, the L/C Issuers or the Swingline Lenders, to the address, telecopier number, electronic mail address or telephone number specified for such Person on *Schedule 11.02* (as may be update from time to time); and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices 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 (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection *(b)* below, shall be effective as provided in such subsection *(b)*.

(b) *Electronic Communications*. Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender or either L/C Issuer pursuant to *Article II* if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers may, in its 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.

(c) *The Platform*. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE CREDIT PARTY MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE CREDIT PARTY MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE CREDIT PARTY MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "*Agent Parties*") have any liability to the Borrowers or any other Credit Party, any Lender, either L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Borrower's or any other Credit Party's or the Administrative Agent's transmission of Credit Party Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided*, *however*, that in no event shall any Agent Party have any liability to the Borrowers or any other Credit Party, any Lender, either L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) *Change of Address*, *Etc*. Each of the Borrowers, the Administrative Agent, each L/C Issuers and each Swingline Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrowers, the Administrative Agent, the L/C Issuers and the Swinglines Lender.

(e) *Reliance by Administrative Agent, L/C Issuers and Lenders*. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic Loan Notices and Swingline Loan Notices) purportedly given by or on behalf of the Borrowers even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify the Administrative Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 ***No Waiver; Cumulative Remedies*.**

No failure by any Lender, either L/C Issuer, either Swingline Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

11.04 ***Expenses; Indemnity; Damage Waiver*.**

(a) *Costs and Expenses*. The Borrowers shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, each Collateral Agent and their respective Affiliates (including the reasonable fees, charges and disbursements of separate counsel for the Administrative Agent and the Collateral Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Credit Agreement and the other Credit Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by L/C Issuers in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, each Collateral Agent, any Lender or either L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, each Collateral Agent, any Lender or either L/C Issuer), in connection with the enforcement or protection of its rights (A) in connection with this Credit Agreement and the other Credit Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) *Indemnification by the Borrowers*. The Borrowers shall indemnify the Administrative Agent (and any sub-agent thereof), each Collateral Agent, each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "*Indemnitee*") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrowers or any other Credit Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Credit Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Credit Agreement and the other Credit Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by an L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous

Materials on or from any property owned or operated by the Borrowers or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrowers or any of their Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrowers or any other Credit Party, and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Borrower or any other Credit Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Credit Document, if the a Borrower or such Credit Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) *Reimbursement by Lenders*. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under subsection *(a)* or *(b)* of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), either Collateral Agent, an L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the applicable Collateral Agent, the applicable L/C Issuer or such Related Party, as the case may be, such Lender's Aggregate Commitment Percentage or, in the case of L/C Obligations, Revolving Commitment Percentage (determined in each case as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the applicable Collateral Agent, the applicable L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the applicable Collateral Agent or the applicable L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of *Section 2.11(d)*.

(d) *Waiver of Consequential Damages, Etc*. To the fullest extent permitted by applicable law, the Borrowers shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Credit Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Credit Agreement or the other Credit Documents or the transactions contemplated hereby or thereby.

(e) *Payments*. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) *Survival*. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other obligations hereunder or under any other Credit Document.

11.05 *Payments Set Aside*.

To the extent that any payment by or on behalf of any Borrower is made to the Administrative Agent, either L/C Issuer or any Lender, or the Administrative Agent, either L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, either L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued

in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent on demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Credit Agreement.

11.06 *Successors and Assigns*.

(a) *Successors and Assigns Generally*. The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection *(b)* of this Section, (ii) by way of participation in accordance with the provisions of subsection *(d)* of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection *(f)* of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Credit Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection *(d)* of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Credit Agreement.

(b) *Assignments by Lenders*. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Credit Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection *(b)*, participations in L/C Obligations and in Swingline Loans) at the time owing to it); *provided* that

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5 million, in the case of Revolving Commitments, and $1 million, in the case of the Foreign Term Loans, unless each of the Administrative Agent and, in the case of an assignment of Revolving Commitments and Revolving Obligations, so long as no Event of Default has occurred and is continuing, the Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed); *provided*, *however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Credit Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to rights in respect of Swingline Loans;

(iii) any assignment of a Commitment must be approved by the Administrative Agent and, with respect to any assignment of the Revolving Commitments and Revolving Obligations, the applicable L/C Issuer and the applicable Swingline Lender, unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount, if any, required as set forth on *Schedule 11.06*, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Credit Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Credit Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Credit Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Credit Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of *Sections 3.01*, *3.04*, *3.05*, and *11.04* with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Credit Agreement that does not comply with this subsection shall be treated for purposes of this Credit Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection *(d)* of this Section.

(c) *Register*. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Credit Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by each of the Borrowers and each L/C Issuer at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Credit Documents is pending, any Lender wishing to consult with other Lenders in connection therewith may request and receive from the Administrative Agent a copy of the Register.

(d) *Participations*. Any Lender may at any time, with the consent of the Borrower so long as no Event of Default has occurred and is continuing, sell participations to any Person (other than a natural person or the Borrowers or any Borrower's Affiliates or Subsidiaries) (each, a "*Participant*") in all or a portion of such Lender's rights and/or obligations under this Credit Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swingline Loans) owing to it); *provided* that (i) such Lender's obligations under this Credit Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Credit Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to *Section 11.01* that affects such Participant. Subject to subsection *(e)* of this Section, each of the Borrowers agrees that each Participant shall be entitled to the benefits of *Sections 3.01*, *3.04* and *3.05* to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection *(b)* of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of *Section 11.08* as though it were a Lender, *provided* such Participant agrees to be subject to *Section 2.12* as though it were a Lender.

(e) *Limitation upon Participant Rights*. A Participant shall not be entitled to receive any greater payment under *Section 3.01* or *3.04* than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrowers' prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of *Section 3.01* unless the Borrowers are notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with *Section 3.01(e)* as though it were a Lender.

(f) *Certain Pledges*. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Credit Agreement (including under its Note(s), if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) *Electronic Execution of Assignments*. The words "execution", "signed", "signature", and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.07 *Treatment of Certain Information; Confidentiality*.

Each of the Administrative Agent, the Lenders and each L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Credit Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Credit Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrowers and their obligations, (g) with the consent of the Borrowers or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, each L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrowers.

For purposes of this Section, "*Information*" means all information received from the Borrowers or any Subsidiary relating to the Borrowers or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or either L/C Issuer on a nonconfidential basis prior to disclosure by the Borrowers or any Subsidiary, *provided* that, in the case of information received from the Borrowers or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning the Borrowers or any of their Subsidiaries, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including federal and state securities Laws.

11.08 ***Right of Setoff.***

If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Credit Party against any and all of the obligations of such Borrower or such Credit Party now or hereafter existing under this Credit Agreement or any other Credit Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Credit Agreement or any other Credit Document and although such obligations of the Borrowers or such Credit Party may be contingent or unmatured or are owed to a branch or office of such Lender or such L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 ***Interest Rate Limitation.***

Notwithstanding anything to the contrary contained in any Credit Document, the interest paid or agreed to be paid under the Credit Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "*Maximum Rate*"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 ***Counterparts; Integration; Effectiveness.***

This Credit Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Credit Agreement and the other Credit Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in *Section 5.01*, this Credit Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Credit Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Credit Agreement.

11.11 ***Survival of Representations and Warranties.***

All representations and warranties made hereunder and in any other Credit Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and

delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.12 ***Severability*****.**

If any provision of this Credit Agreement or the other Credit Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Credit Agreement and the other Credit Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.13 ***Replacement of Lenders*****.**

If any Lender requests compensation under *Section 3.04*, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to *Section 3.01*, or if any Lender is a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, *Section 11.06*), all of its interests, rights and obligations under this Credit Agreement and the related Credit Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(a) the Borrowers shall have paid to the Administrative Agent the assignment fee specified in *Section 11.06(b)(iv)*;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Credit Documents (including any amounts under *Section 3.05*) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under *Section 3.04* or payments required to be made pursuant to *Section 3.01*, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

11.14 ***Governing Law; Jurisdiction; Etc*****.**

(a) *GOVERNING LAW*. THIS CREDIT AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) *SUBMISSION TO JURISDICTION*. THE BORROWERS AND EACH OTHER CREDIT PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN

DISTRICT OF SUCH STATE AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS CREDIT AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS CREDIT AGREEMENT OR IN ANY OTHER CREDIT DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR EITHER L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS CREDIT AGREEMENT OR ANY OTHER CREDIT DOCUMENT AGAINST THE BORROWERS OR ANY OTHER CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) *WAIVER OF VENUE*. THE BORROWERS AND EACH OTHER CREDIT PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS CREDIT AGREEMENT OR ANY OTHER CREDIT DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) *SERVICE OF PROCESS*. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN *SECTION 11.02*. NOTHING IN THIS CREDIT AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.15 ***Waiver of Jury Trial*.**

EACH PARTY HERETO HEREBY IRREVOCABLY 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 CREDIT AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON 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 CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 ***USA PATRIOT Act Notice*.**

Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Act*"), it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Borrower in accordance with the Act.

11.17 ***Judgment Currency.***

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Credit Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrowers in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Credit Documents shall, notwithstanding any judgment in a currency (the "*Judgment Currency*") other than that in which such sum is denominated in accordance with the applicable provisions of this Credit Agreement (the "*Agreement Currency*"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrowers in the Agreement Currency, the Borrowers agree, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to such Borrowers (or to any other Person who may be entitled thereto under applicable law).

11.18 ***Designation as Senior Debt.***

All Obligations shall be "Designated Senior Indebtedness" for purposes of and as defined in the Senior Subordinated Notes Indenture.

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IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed as of the date first above written.

DOMESTIC BORROWERS:

TEMPUR-PEDIC, INC.,
a Kentucky corporation

By: /s/ DALE E. WILLIAMS
Name: **Dale E. Williams**
Title: **Chief Financial Officer**

TEMPUR PRODUCTION USA, INC.,
a Virginia corporation

By: /s/ WILLIAM H. POCHE
Name: **William H. Poche**
Title: **Assistant Treasurer**

FOREIGN BORROWER:

DAN-FOAMApS,
a private limited liability company existing under the laws of Denmark

By: /s/ DALE E. WILLIAMS
Name: **Dale E. Williams**
Title: **Attorney in Fact**

DOMESTIC GUARANTORS:

TEMPUR-PEDICINTERNATIONAL INC.,
a Delaware corporation
TEMPUR WORLD, LLC,
a Delaware limited liability company

By: /s/ WILLIAM H. POCHE
Name: **William H. Poche**
Title: **Assistant Treasurer of each of the foregoing**

TEMPUR WORLD HOLDINGS, LLC,
a Delaware limited liability company

By: /s/ WILLIAM H. POCHE
Name: **William H. Poche**
Title: **Assistant Secretary**

TEMPUR-PEDIC MEDICAL, INC.,
a Kentucky corporation
TEMPUR-PEDIC PROFESSIONAL, INC.,
a Delaware corporation
TEMPUR-PEDIC RETAIL, INC.,
a Delaware corporation

By: /s/ JASON P. BROYLES
Name: **Jason P. Broyles**
Title: **Chief Financial Officer of each of the foregoing**

TEMPUR-PEDIC, DIRECT RESPONSE, INC.,
a Kentucky corporation

By: /s/ WILLIAM H. POCHE
Name: **William H. Poche**
Title: **Chief Financial Officer**

DAWN SLEEP TECHNOLOGIES, INC.,
a Delaware corporation

By: /s/ DALE E. WILLIAMS
Name: **Dale E. Williams**
Title: **Chief Financial Officer**

FOREIGN GUARANTORS:

TEMPUR WORLD HOLDINGS, S.L.,
a company organized under the laws of Spain

By: /s/ DALE E. WILLIAMS
Name: **Dale E. Williams**
Title: **Director**

TEMPUR DANMARK A/S,
a stock company existing under the laws of Denmark

By: /s/ DALE E. WILLIAMS
Name: **Dale E. Williams**
Title: **Attorney in Fact**

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A.,
as Administrative Agent and Domestic Collateral Agent

By: /s/ BRIAN P. SALLEE
Name: **Brian P. Sallee**
Title: **Vice President**

LENDERS:

BANK OF AMERICA, N.A.,
as Domestic L/C Issuer, Domestic Swingline Lender and as a Lender

By: /s/ BRIAN P. SALLEE
Name: **Brian P. Sallee**
Title: **Vice President**

NORDEA BANK DANMARK A/S,
as Foreign L/C Issuer, Foreign Swingline Lender, Foreign Collateral Agent and a Lender

By: /s/ HANS CHRISTIANSEN
Name: **Hans Christiansen**
Title: **Head of Corporate**

By: /s/ KNUD-HENRIK GRABOW
Name: **Knud-Henrik Grabow**
Title: **Vice President**

FIFTH THIRD BANK,
as a Lender and Domestic Swingline Lender

By: /s/ HOLLY BRANHAM
Name: **Holly Branham**
Title: **CRM-AC**

SUNTRUST BANK,
as a Lender

By: /s/ SCOTT CORLEY
Name: **Scott Corley**
Title: **Managing Director**

TRUST INDENTURE

Dated as of September 1, 2005

Between

BERNALILLO COUNTY, NEW MEXICO

and

THE BANK OF NEW YORK TRUST COMPANY, N.A.

as Trustee

Pertaining to the Issuance of and Securing

BERNALILLO COUNTY, NEW MEXICO
TAXABLE INDUSTRIAL REVENUE BONDS
(TEMPUR PRODUCTION USA, INC. PROJECT)

TAXABLE VARIABLE RATE
SERIES 2005A

and Further Pertaining to the Issuance of:

TAXABLE FIXED RATE UNSECURED
SERIES 2005B

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TRUST INDENTURE

This **TRUST INDENTURE**, dated as of September 1, 2005, between **BERNALILLO COUNTY, NEW MEXICO**, a political subdivision of the State of New Mexico (the "Issuer"), and **THE BANK OF NEW YORK TRUST COMPANY, N.A.**, a national banking association organized and existing under the laws of the United States, having power and authority to accept and execute trusts, and having a corporate trust office in Jacksonville, Florida, as trustee (the "Trustee").

W I T N E S S E T H :

WHEREAS, the Issuer is a political subdivision of the State of New Mexico (the "State"). Pursuant to Sections 4-59-1 through 4-59-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Industrial Revenue Bond Act"), the County Commission (the "Commission") of the Issuer is authorized to acquire, construct and equip certain industrial or commercial projects and to issue its industrial revenue bonds to finance such projects and certain related costs for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the State and promoting a sound and proper balance in the State between agriculture, commerce and industry. Such bonds are payable solely out of revenue derived from the acquisition, ownership, leasing or sale of such projects. Such bonds may be further secured by an assignment of the Issuer's interest in the lease agreements respecting the project to be acquired, constructed and equipped. Under the Industrial Revenue Bond Act, a project may include land, buildings, machinery, equipment and other property deemed necessary in connection with such project; and

WHEREAS, Tempur Production USA, Inc., (together with its successors and assigns, the "Company"), presented to the Issuer a proposal relating to the issuance of industrial revenue bonds and the development of a facility for the Company's mattress and pillow manufacture operations. The County Commission of the Issuer, by Ordinance adopted on August 23, 2005 (the "Ordinance"), authorized, among other matters, (i) the issuance of its Bernalillo County, New Mexico Taxable Industrial Revenue Bonds (Tempur Production USA, Inc. Project) Taxable Variable Rate Series 2005A substantially in the form of Exhibit A-1 and Taxable Fixed Rate Unsecured Series 2005B substantially in the form of Exhibit A-2 in the maximum principal collective amount not to exceed $100,000,000 (the "Bonds") and (ii) the execution and delivery of this Indenture; and

WHEREAS, the Issuer has entered into a Lease Agreement dated as of the date of this Indenture (together with any and all amendments and supplements, the "Lease Agreement") with the Company, under which the Issuer has leased the Project Property (as defined in the Agreement) to the Company and the Company has agreed to make rental payments in amounts sufficient to pay the principal of, interest on and redemption and purchase price of the Bonds when due; and

WHEREAS, to secure the payment of the principal thereof and interest thereon, the Issuer has, contemporaneously with the delivery of the Bonds, assigned its rights, title and interests in the Lease Agreement, without recourse, to the Trustee and has authorized the execution and delivery of this Indenture; and

WHEREAS, as further security for the Series 2005A Bonds, the Company will cause Bank of America, N.A. (the "Bank") to issue its irrevocable direct pay letter of credit (as amended to increase the stated amount thereof in connection with the issuance of Additional Series 2005A Bonds (as defined herein) subsequent to the Initial Series 2005A Bonds (as defined herein) (the "Letter of Credit") in favor of the Trustee for the benefit of the holders of the Series 2005A Bonds; and

WHEREAS, the Trustee has agreed to accept the duties and responsibilities of the Trustee hereunder according to the terms hereof; and

WHEREAS, all acts and proceedings required by law necessary to make the Bonds, when executed by the Issuer, authenticated and delivered by the Fiscal Agent (as hereinafter defined), and duly issued, the valid, binding and legal obligations of the Issuer , and to constitute this Indenture a valid and binding agreement for the uses and purposes set forth herein in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture have been in all respects duly authorized;

NOW, THEREFORE, in consideration of the premises and of the covenants and undertakings herein expressed, the parties hereto agree as follows:

GRANTING CLAUSES

The Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Owners (as hereinafter defined) thereof, of the issuance of the Letter of Credit by the Bank, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure (i) the payment of the principal of, and interest on, the Bonds according to their tenor and effect, (ii) the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, and (iii) the obligations of the Issuer arising under or in connection with the Credit Agreement (which as to the Series 2005A Bonds shall be subordinate to the extent not represented by Bank Bonds or not consisting of the Bank's subrogated interest in the Series 2005A Bonds) does hereby grant, bargain, sell, convey, assign, and pledge unto the Trustee and its successors in trust and assigns forever, and grant to the Trustee, and its successors in trust and assigns forever a security interest in, the following (the "Trust Estate"), subject in all cases to the provisions of this Indenture permitting the application thereof for the purposes and on the terms set forth in this Indenture, such grant, bargain, sale, conveyance, assignment, pledge and security interest to be effective without the recording of this Indenture or any other instrument:

GRANTING CLAUSE FIRST

All right, title, and interest of the Issuer in and under the Lease Agreement (as hereinafter defined), including all extensions and renewals of any of the terms of the Lease Agreement, if any, including, but without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for all payments of principal, interest, and other sums payable to or receivable by the Issuer under or due to its ownership of any interest in the Lease Agreement, the Receipts and Lease Payments of the Issuer from the Lease Agreement, all rights to bring actions and proceedings under the Lease Agreement or for the enforcement thereof, and all rights to do any and all things which the Issuer is or may become entitled to do under or due to its ownership of the Lease Agreement, other than the Unassigned Rights (as hereinafter defined).

GRANTING CLAUSE SECOND

All moneys received by the Trustee pursuant to the Letter of Credit.

GRANTING CLAUSE THIRD

All moneys and securities (including the investment income therefrom) and all other property of every kind and of every name and nature which are now or from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for security hereunder to the Trustee by the Issuer or by anyone on its behalf, or with its written consent or as otherwise permitted hereunder, and all cash and securities now or hereafter held in the Funds (as hereinafter defined) created under this Indenture (except that moneys received for the payment of tendered or repurchased Series 2005A Bonds are hereby pledged to the sole benefit of the Owners of Series 2005A Bonds tendered or deemed tendered) and all investment earnings thereon.

TO HAVE AND TO HOLD all and singular the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its respective successors in trust and assigns forever, subject, however, to the terms and provisions of this Indenture and the Lease Agreement permitting the application thereof for the purposes provided herein and therein, for (i) the benefit and security of each and every holder of the Series 2005A Bonds and Series 2005B Bonds, each in accordance with the terms of such Bonds, without preference, priority or distinction as to participation in the lien, benefit, and protection hereof of one Bond of a series over or from the others of the same series, by reason of priority in the issue or negotiation thereof, or for any other reason

whatsoever, except as herein otherwise expressly provided, so that each and all of such Bonds of each series shall have the same right, lien, and privilege under this Indenture and shall be equally secured hereby with the same effect as if the same had all been made, issued and negotiated simultaneously with the delivery hereof; (ii) the payment of the fees and expenses of the Trustee, Fiscal Agent and the Remarketing Agent; and (iii) the security of the amounts owing by the Company under the Credit Agreement (which as to the Series 2005A Bonds shall be subordinate to the extent not represented by Bank Bonds or not consisting of the Bank's subrogated interest in the Series 2005A Bonds).

AND IN FURTHERANCE OF THE FOREGOING, but subject to the foregoing provisions of these granting clauses and the further provisions of this Indenture, the Issuer hereby irrevocably authorizes and empowers the Trustee, in its own name, or in the name of its nominee, or in the name of, or as attorney-in-fact for, the Issuer, to ask, demand, sue for, collect and receive any and all payments to which the Issuer is or may become entitled under the Lease Agreement, the Letter of Credit or other collateral, and to ensure compliance by each and every party to each and every such agreement or contract with all or any of the terms and provisions thereof to which such person is a party.

AND PROVIDED, FURTHER, the Trustee agrees to accept receipt of and hold subject to the provisions hereof the executed Lease Agreement delivered by the Company and declares and agrees that it holds and will hold as trustee for the sole benefit of the Bondholders, in accordance with the rights of each series of Bonds, the Trustee, the Remarketing Agent, and the others entitled to the benefits thereof, the Lease Agreement.

PROVIDED, HOWEVER, that if (i) the Issuer shall pay or cause to be paid the principal of and interest on all of the Bonds at the times and in the manner provided in the Bonds, or shall provide for the payment thereof in accordance with Article VII hereof, and shall otherwise comply with Article VII hereof, (ii) all amounts due to the Trustee, the Fiscal Agent and the Remarketing Agent have been paid or provision for payment thereof satisfactory to the Trustee and the Remarketing Agent shall have been made, and (iii) all amounts due to the Bank have been paid, then the lien of this Indenture shall cease, terminate, and be void as provided in Article VII hereof, otherwise this Indenture shall be and remain in full force and effect.

THIS INDENTURE OF TRUST FURTHER WITNESSETH, and it is expressly declared that all Bonds issued and secured hereunder are to be issued, authenticated and delivered, and all property, rights, and interest hereby assigned and pledged, are to be dealt with and disposed of, under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and the Issuer has agreed and covenants, and does hereby agree and covenant, with the Trustee, the Bank, and with the respective Owners, from time to time, of the Bonds as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01 *Definitions*. For all purposes of this Indenture, unless the context or use clearly indicates another or different meaning or intent, the following terms shall have the following meanings, and any other words and terms defined in the recitals to this Indenture or in the Lease Agreement shall have the same meanings when used herein as assigned to them in such recitals hereto or in the Lease Agreement:

"**Act**" means collectively, the Industrial Revenue Bond Act and the Public Securities Short-Term Interest Rate Act, Sections 6-18-1 to 6-18-16, New Mexico Statutes Annotated, 1978 Compilation, as amended.

"**Additional Bond Advance**" means any advances on the Initial Bonds as authorized pursuant to Section 2.10.

"**Additional Bonds**" means any Bonds issued and delivered pursuant to Section 2.09.

"**Additional Series 2005A Bonds**" means any Series 2005A Bonds issued and delivered pursuant to Section 2.09.

"**Additional Series 2005B Bonds**" means any Series 2005B Bonds issued and delivered pursuant to Section 2.09.

"**Alternate Rate**" is defined in Section 2.02(e).

"**Alternate Rate Period**" means each period during which an Alternate Rate is in effect.

"**Authorized Denominations**" means with respect to all Bonds $100,000 and any integral multiple of $5,000 in excess thereof.

"**Available Moneys**" means moneys which are (a) continuously on deposit with the Trustee in trust for the benefit of the Bondholders in a separate and segregated account in which only Available Moneys are held and which are (b) proceeds of (i) the Bonds received contemporaneously with and directly from the issuance and sale of the Bonds, (ii) payments made by the Issuer or the Company if at the time of the deposit of such payments and for a period of at least 366 days thereafter no Bankruptcy Filing against the Issuer or the Company shall have occurred, (iii) a draw by the Trustee on the Letter of Credit, (iv) refunding bonds for which the Trustee has received a written opinion of Bankruptcy Counsel to the effect that payment of such moneys to the Bondholders would not constitute an avoidable preference under Section 547 of the United States Bankruptcy Code in the event the Issuer or the Company were to become a debtor under the United States Bankruptcy Code, or (v) income derived from the investment of the foregoing.

"**Bank**" means the issuer of the Letter of Credit, initially Bank of America, N.A., and upon the issuance and delivery of a Substitute Letter of Credit, shall mean the issuer of such Substitute Letter of Credit.

"**Bank Administrative Agent**" means Bank of America, N.A., as Administrative Agent under the Credit Agreement and its successors and assigns in such capacity.

"**Bank Bonds**" means any Series 2005A Bonds purchased with proceeds from a draw under the Letter of Credit and held under the Credit Agreement.

"**Bank Representative**" means each person at the time designated to act on behalf of the Bank by written certificate furnished to the Trustee, containing the specimen signature of such person and signed on behalf of the Bank by an authorized officer of the Bank. Such certificate may designate an alternate or alternates.

"**Bankruptcy Counsel**" means any counsel nationally recognized in bankruptcy matters which is independent of the Issuer and the Company and is reasonably acceptable to the Trustee.

"**Bankruptcy Filing**" means the filing of a petition by or against the Issuer or the Company, as the case may be, as debtor under the United States Bankruptcy Code or similar bankruptcy or insolvency act. If the petition has been dismissed and the dismissal is final and not subject to appeal at the relevant time, the filing shall not be considered to have occurred.

"**Base Rate**" means 67% of one month LIBOR.

"**Beneficial Owner**" is defined in Section 2.05(c).

"**Bond Advance Notice**" means the notice delivered pursuant to Section 2.10 and substantially in the form of *Exhibit D* hereto.

"**Bond Counsel**" means, with respect to the original issuance of the Bonds, Hughes & Strumor, Ltd. Co., Albuquerque, New Mexico and thereafter such other firm of nationally recognized attorneys at law appointed by the Issuer, approved by the Company and the Bank, acceptable to the Trustee and the Remarketing Agent.

"**Bond Fund**" means the Fund by that name created pursuant to Section 4.02.

"**Bonds**" means the Series 2005A Bonds and the Series 2005B Bonds and such other bonds issued pursuant to this Indenture from time to time, including the Initial Bonds and all Additional Bonds.

"**Business Day**" means any day other than (a) a Saturday or Sunday, (b) a day on which commercial banks in New York, New York, or the city or cities in which the corporate trust office of the Trustee or the Fiscal Agent, the primary office of the Remarketing Agent or the paying office of the Bank are located are authorized or required by law or executive order to close, or (c) a day on which the New York Stock Exchange or DTC is closed. For purposes of this definition, "paying office of the Bank" means the Bank office responsible for making payments under any Letter of Credit.

"**Cede & Co.**" means Cede & Co., the nominee of DTC or any successor nominee of DTC with respect to the Bonds.

"**Chairman**" means the Chairman of the Board of County Commissioners of the Issuer, or the Vice-Chair of the Board of County Commissioners of the Issuer acting in the Chairman's absence.

"**Company**" means Tempur Production USA, Inc., a Virginia corporation, and its successors and assigns.

"**Company Representative**" means each person at the time designated to act on behalf of the Company by a written certificate furnished to the Issuer, the Trustee and the Bank containing the specimen signature of such person and signed on behalf of the Company by an authorized officer of the Company. Such certificate may designate an alternate or alternates.

"**Construction Account**" means the account by that name created in the Project Fund pursuant to Section 4.06 hereof.

"**Conversion Date**" means with respect to the Series 2005A Bonds the effective date of the conversion of the Series 2005A Interest Rate thereon to a different Series 2005A Interest Rate (other than the initial interest rate established on or before the issuance date).

"**Cost**" **or** "**Cost of Project**" with respect to the Project shall be deemed to include the cost of all items to be financed under the provisions of the Industrial Revenue Bond Act.

"**Cost of Issuance Account**" means the account by that name created in the Project Fund pursuant to Section 4.06 hereof.

"**Counsel**" means (a) an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to or an employee of, the Issuer, the Trustee, the Remarketing Agent, the Bank or the Company) duly admitted to practice law before the highest court of any state or (b) any other counsel satisfactory to the Issuer and the Bank.

"**County Clerk**" means the County Clerk of the Issuer, or the Deputy Clerk of the Issuer acting in the County Clerk's absence.

"**Credit Agreement**" means the agreement between the Company and the Bank pursuant to which the Letter of Credit or any Substitute Letter of Credit is issued by the Bank and delivered to the Trustee, and any and all modifications, alterations, amendments and supplements thereto. Initially, the Credit Agreement means the Credit Agreement dated as of October 18, 2005, among the Company and certain of its affiliates as borrowers, Tempur-Pedic International, Inc. a Delaware Corporation, and certain of its subsidiaries and affiliates as guarantors, the lenders identified therein and the Bank of America, N.A., as administrative agent, as amended, supplemented, modified, extended, renewed or replaced.

"**DTC**" means The Depository Trust Company, a limited purpose company organized under the laws of the State of New York, and its successors and assigns.

"**DTC Participant**" or "**DTC Participants**" means securities brokers and dealers, banks, trust companies and clearing corporations which have access, as participants or otherwise (directly or indirectly) to the DTC system.

"**Designation of Bond**" means the form of Designation of Bond to be delivered to the Issuer and the Trustee and executed by a Borrower Representative, a Bank Representative and an Underwriter Representative, in the form attached to this Indenture as Exhibit C.

"**Event of Default**" is defined in Section 8.01.

"**Fiscal Agent**" means the agent appointed from time to time pursuant to Section 9.09.

"**Fitch**" means Fitch, Inc.

"**Flexible Rate**" means, with respect to the Series 2005A Bonds, the nonvariable interest rate on the Series 2005A Bonds established periodically in accordance with Section 2.02(a)(ii).

"**Flexible Rate Bond**" means any Series 2005A Bond bearing interest at a Flexible Rate.

"**Flexible Rate Period**" means each period, comprised of Flexible Rate Terms, during which Flexible Rates are in effect.

"**Flexible Rate Term**" means, with respect to any Series 2005A Bond, each period established periodically in accordance with Section 2.02(a)(ii), and as permitted by Section 2.02(b)(ii).

"**Funds**" means the funds created pursuant to Article IV hereof.

"**Indenture**" means this Trust Indenture, as it may be amended or supplemented from time to time in accordance with its terms.

"**Industrial Revenue Bond Act**" means Sections 4-59-1 through 4-59-16, New Mexico Statutes Annotated, 1978 Compilation, as amended.

"**Initial Bonds**" means the Initial Series 2005A Bonds and the Initial Series 2005B Bonds.

"**Initial Series 2005A Bond Advance**" means the initial Additional Bond Advance made under the Initial Series 2005A Bonds.

"**Initial Series 2005B Bond Advance**" means the initial Additional Bond Advance made under the Initial Series 2005B Bonds.

"**Initial Series 2005A Bonds**" means the $75,000,000 in aggregate principal amount of Series 2005A Bonds to be issued contemporaneously with the execution of this Indenture.

"**Initial Series 2005B Bonds**" means the $25,000,000 in aggregate principal amount of Series 2005B Bonds to be issued contemporaneously with the execution of this Indenture.

"**Interest Rate Period**" means any Weekly Rate Period or Flexible Rate Period.

"**Issuer**" means Bernalillo County, New Mexico, a political subdivision of the State, and its successors and assigns.

"**Lease Agreement**" means the Lease Agreement, including all exhibits attached thereto, dated as of September 1, 2005, between the Issuer and the Company, as the same may be amended, modified or supplemented from time to time in accordance with the Indenture.

"**Lease Default**" means an Event of Default under Section 7.1 of the Lease Agreement.

"**Lease Payments**" means the payments of principal and interest made by the Company to the Issuer pursuant to Section 4.3 of the Lease Agreement.

"**Letter of Credit**" means an irrevocable direct pay letter of credit having the characteristics of a "credit" or "letter of credit" set forth in the Uniform Commercial Code of the State of North Carolina (or in the case of a Substitute Letter of Credit, the Uniform Commercial Code of the state under whose laws such Substitute Letter of Credit is governed) except that a letter of credit (a) may not be revocable and (b) may only be issued by (i) a national bank, (ii) any banking institution organized under the laws of any state, territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the state or territorial banking commission or similar officials or (iii) a branch or agency of a foreign bank, provided that the nature and extent of federal and/or state regulation and the supervision of the particular branch or agency is substantially equivalent to that applicable to federal or state chartered domestic banks doing business in the same jurisdiction. Initially, the term "Letter of Credit" shall mean the irrevocable, direct-pay letter of credit issued by the Bank to the Trustee, including any permitted supplements or amendments thereto and any renewals or extensions thereof, and, upon the expiration or termination of the Letter of Credit and the issuance and delivery of a Substitute Letter of Credit meeting the requirements set forth in this paragraph and in Section 5.03 hereof, "Letter of Credit" shall mean such Substitute Letter of Credit.

"**LIBOR**" means, for any day of determination, the rate of interest equal to the one month London interbank offered rate as published in the "Money Rates" section of *The Wall Street Journal*; provided that if any day of determination is not a Business Day, "LIBOR" for such day shall mean the rate as published on the immediately preceding Business Day.

"**Mandatory Repurchase Date**" means, with respect to any Series 2005A Bonds, the date on which such Series 2005A Bonds are required to be purchased pursuant to Section 3.07(a).

"**Maximum Rate**" means the lesser of (a) the highest interest rate which may be borne by the Bonds under State law and (b) twelve percent (12%) per annum.

"**Moody's**" means Moody's Investors Service, Inc.

"**Notice of Mandatory Repurchase**" means that notice required to be prepared by the Trustee and given by the Fiscal Agent pursuant to Section 3.07, the form of which is attached hereto as Exhibit B.

"**Opinion of Bond Counsel**" means a written opinion of Bond Counsel.

"**Opinion of Counsel**" means a written opinion of Counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuer, the Trustee, the Remarketing Agent, the Bank or the Company.

"**Optional Tender Date**" is defined in Section 3.07(b)(i).

"**Outstanding**" when used with reference to Bonds, or "Bonds outstanding" means all Bonds which have been authenticated and delivered by the Fiscal Agent under this Indenture, except the following:

(a) Bonds canceled or purchased by or delivered to the Fiscal Agent for cancellation pursuant to the provisions of this Indenture. Except as otherwise provided in Section 3.08, Series 2005A Bonds purchased by the Company pursuant to optional tender or mandatory repurchase under Section 3.07 (including Bank Bonds) shall continue to be outstanding until the holder of such Bonds directs the Fiscal Agent to cancel them;

(b) Bonds that have become due (at maturity or upon redemption, acceleration or otherwise) and for the payment, including interest accrued to the due date, of which sufficient moneys are held by the Fiscal Agent;

(c) Bonds deemed paid pursuant to Section 7.01; and

(d) Bonds in lieu of others which have been authenticated under Section 2.05 (relating to registration and exchange of Bonds) or Section 2.06 (relating to mutilated, lost, stolen, destroyed or undelivered Bonds).

"**Owner**", "**owner**", "**Bondholder**", "**bondholder**", "**Holder**", "**holder**" or words of similar import mean: (a) in the event that the book-entry system of evidence and transfer of ownership in the Bonds is employed pursuant to Section 2.05(c), Cede & Co., as nominee for DTC, or its nominee, and (b) in all other cases, the registered owner or owners of any Bond fully registered as shown on the register maintained by the Fiscal Agent.

"**Permitted Investments**" means any of the following which at the time of investment are legal investments under laws of the State for the moneys proposed to be invested therein:

(a) U.S. Government Obligations

(b) Direct obligations of any of the following federal agencies or federally sponsored entities which are not fully guaranteed by the full faith and credit of the United States of America:

(1) Federal National Mortgage Association (FNMA);

(2) Federal Home Loan Mortgage Corporation (FHLMC);

(3) Resolution Funding Corporation (REFCORP);

(4) Student Loan Marketing Association (SLMA);

(5) Federal Home Loan Bank Systems (FHLB); and

(6) Obligations of other federal government sponsored agencies approved by the Bank.

(c) Commercial paper which is rated at the time of purchase in the highest classification (without regard to qualifier), "A-1" by S&P and "P-1" by Moody's and which matures not more than 270 days after the date of purchase.

(d) Investment agreements the provider of which is rated in one of the two highest rating categories, without regard to qualifiers, by two Rating Agencies under which the provider agrees to periodically deliver, on a delivery versus payment basis, such securities as are described in clauses (a) through (c) above.

(e) Investment agreements the provider of which is rated in one of the two highest rating categories, without regard to qualifiers, by two Rating Agencies and which are continuously and fully secured by such securities as are described in clauses (a) and (b) above, which securities shall have a market value at all times at least equal to 102% of the principal amount invested under the investment agreement (marked to market at least weekly).

(f) money market mutual funds (1) that invest in U.S. Government Obligations or that are registered with the federal Securities and Exchange Commission (SEC), and (2) that are rated in either of the two highest categories by a Rating Agency, including funds for which the Trustee and/or its affiliates provide investment advisory or other management services; and

(g) such other investments approved in writing by the Bank.

"**Person**" means (a) any individual, (b) any corporation, partnership, limited liability company, joint venture, association, joint-stock company, business trust or unincorporated organization, or grouping of any such entities, in each case formed or organized under the laws of the United States of America, any state thereof or the District of Columbia, or (c) the United States of America or any state thereof, or any political subdivision of either thereof, or any agency, authority or other instrumentality of any of the foregoing.

"**Project**" means the acquisition, construction, installation and equipping of an approximately 750,000 square foot mattress and pillow manufacturing plant in the County of Bernalillo, City of Albuquerque, New Mexico.

"**Project Fund**" means the Fund by that name created pursuant to Section 4.06 hereof.

"**Rating Agency**" means, if the Series 2005A Bonds are rated, Moody's, if such agency's ratings are in effect with respect to the Series 2005A Bonds, Standard & Poor's, if such agency's ratings are in effect with respect to the Series 2005A Bonds, and Fitch, if such agency's ratings are in effect with respect to the Series 2005A Bonds, and their respective successors and assigns. If any such corporation ceases to act as a securities rating agency, the Company may, with the approval of the Remarketing Agent and the Bank, appoint any nationally recognized securities rating agency as a replacement.

"**Receipts and Lease Payments**" means all the payments of principal and interest paid to the Issuer pursuant to Section 4.3 of the Lease Agreement, and receipts of the Trustee credited under the provisions of this Indenture against such payments, including all moneys received by the Trustee from a draw under the Letter of Credit (other than moneys drawn to purchase Series 2005A Bonds pursuant to the terms hereof).

"**Remarketing Agent**" means initially Banc of America Securities LLC, and any successor agent or agents appointed from time to time pursuant to Section 9.12.

"**Remarketing Agreement**" means (a) initially the Remarketing and Interest Services Agreement, dated as of September 1, 2005, between the Company and the Remarketing Agent and any and all modifications, alterations, amendments and supplements thereto and (b) any agreement between the Company and any successor remarketing agent appointed pursuant to Section 9.12.

"**Remarketing Proceeds**" is defined in Section 3.08(b).

"**Scheduled Purchase Date**" is defined in Section 3.08(b).

"**Series 2005A Bonds**" means the Bernalillo County, New Mexico Taxable Industrial Revenue Bonds (Tempur Production USA, Inc. Project) $75,000,000 Taxable Variable Rate Series 2005A.

"**Series 2005B Bonds**" means the Bernalillo County, New Mexico Taxable Industrial Revenue Bonds (Tempur Production USA, Inc. Project) $25,000,000 Taxable Fixed Rate Unsecured Series 2005B.

"**Series 2005B Bond Purchaser**" means Tempur World, LLC.

"**Series 2005A Conversion Bond**" means the Series 2005A Bonds issued pursuant to Section 2.11.

"**Series 2005B Conversion Bond**" means the Series 2005B Bonds designated for conversion into Series 2005A Bonds pursuant to Section 2.11.

"**Series 2005A Interest Payment Date**" means (i) during any Weekly Rate Period, the first day of each month and (ii) during any Flexible Rate Period, the first day after the last day of each Flexible Rate Term.

"**Series 2005A Interest Rate**" means the initial rate of interest established by the Underwriter on or before the issuance date to apply for a period of up to 7 days and thereafter any Weekly Rate or Flexible Rate.

"**Series 2005B Interest Payment Date**" means each March 1st and September 1st, beginning March 1, 2006.

"**Series 2005A Interest Reserve Subaccount**" means the account by that name created in the Bond Fund pursuant to Section 4.01 hereof.

"**Series 2005B Interest Rate**" means a rate of seven and three quarters percent (7.75%) per annum.

"**Series 2005A Purchase Agreement**" means the Bond Purchase Agreement, dated October 26, 2005, among the Company, the Issuer and the Underwriter with respect to the purchase of the Series 2005A Bonds.

"**Series 2005B Purchase Agreement**" means the Bond Purchase Agreement, dated October 26, 2005, among the Company, the Issuer and the Series 2005B Bond Purchaser with respect to the purchase of the Series 2005B Bonds.

"**Series 2005A Record Date**" means with respect to each Series 2005A Interest Payment Date, the Fiscal Agent's close of business on the Business Day next preceding such Series 2005A Interest Payment Date.

"**Series 2005B Record Date**" means with respect to each Series 2005B Interest Payment Date, the Fiscal Agent's close of business on the Business Day next preceding such Series 2005B Interest Payment Date.

"**Standard & Poor's**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"**State**" means the State of New Mexico.

"**Substitute Letter of Credit**" is defined in Section 5.03.

"**Trust Estate**" means all of the moneys, properties and rights described in the Granting Clauses of this Indenture.

"**Trustee**" means, initially, The Bank of New York Trust Company, N.A. and any successor trustee under this Indenture, and any separate or co-trustee at the time serving as such under this Indenture.

"**Unassigned Rights**" means the rights of the Issuer under Section 4.5 (relating to payment of expenses and counsel fees of the Issuer), Section 6.2 (relating to indemnification) and Section 7.4 (relating to expenses of collection) of the Lease Agreement and the rights of the Issuer to receive documentation and notices, to give or withhold consents in connection with the provisions of this Indenture or the Lease Agreement and the right to enforce any of the foregoing.

"**Underwriter**" means initially Banc of America Securities LLC and any successor appointed from time to time by the Company.

"**Underwriter Representative**" means each person at the time designated to act on behalf of the Underwriter by written certificate furnished to the Trustee, containing the specimen signature of such person and signed on behalf of the Underwriter by an authorized officer of the Underwriter. Such certificate may designate an alternate or alternates.

"**Unscheduled Purchase Date**" has the meaning provided in Section 3.08(b).

"**U.S. Government Obligations**" means (a) direct obligations of the United States for which its full faith and credit are pledged for the full and timely payment thereof, (b) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States for the full and timely payment thereof or (c) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (a) or (b).

"**Weekly Rate**" means with respect to the Series 2005A Bonds the variable interest rate on the Series 2005A Bonds established weekly in accordance with Section 2.02(a)(i).

"**Weekly Rate Bond**" means any Series 2005A Bond bearing interest at a Weekly Rate.

"**Weekly Rate Period**" means each period during which a Weekly Rate is in effect.

Section 1.02 *Rules of Construction*. Unless the context otherwise requires,

(a) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles applied on a consistent basis;

(b) references to Articles and Sections are to the Articles and Sections of this Indenture;

(c) terms defined elsewhere in this Indenture shall have the meanings ascribed to them herein;

(d) words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders;

(e) headings used in this Indenture are for convenience of reference only and shall not define or limit the provisions hereof;

(f) each reference herein or in the Bonds to a percentage of Bonds required for notices, consents or for any other reason shall be deemed to refer to Bonds then Outstanding; and

(g) all references herein to time shall be Eastern Time unless otherwise expressly stated.

ARTICLE II

THE BONDS

Section 2.01 *Issuance of Bonds; Form; Dating*.

(a) *Authorization*. There is hereby authorized the issuance from time to time under this Indenture two series of bonds, which shall be designated "Bernalillo County, New Mexico Taxable Industrial Revenue Bonds (Tempur Production USA, Inc. Project) Taxable Variable Rate Series 2005A" and "Bernalillo County, New Mexico Taxable Industrial Revenue Bonds (Tempur Production USA, Inc. Project) Taxable Fixed Rate Unsecured Series 2005B" for the purpose of financing all or a portion of the Project and paying expenses related thereto. The aggregate principal amount of the Series 2005A Bonds outstanding from time to time, including the Initial Series 2005A Bonds and the Additional Series 2005A Bonds, shall not exceed Seventy Five Million Dollars ($75,000,000), and the aggregate principal amount of the Series 2005B Bonds outstanding from time to time, including the Initial Series 2005B Bonds and all Additional Series 2005B Bonds, shall not exceed Twenty Five Million Dollars ($25,000,000), except as provided in Section 2.06 with respect to replacement of mutilated, lost, stolen, destroyed or undelivered Bonds and in Section 2.11 relating to the conversion of the Series 2005B Bonds to Series 2005A Bonds. The Bonds shall be issuable only as fully registered bonds without coupons in Authorized Denominations only, and in substantially the forms of *Exhibit A-1* and *Exhibit A-2*, respectively to this Indenture, with appropriate variations, omissions, insertions, notations, legends or endorsements required by law or usage or permitted or required by this Indenture, including those necessary to reflect the terms, provisions, dates and the like permitted hereby for any Additional Bonds. The Bonds may be in printed or typewritten form. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article.

Notwithstanding any other provisions of this Indenture, no Additional Series 2005A Bonds shall be issued unless the Stated Amount (as defined in the Letter of Credit) under the Letter of Credit shall be equal to the aggregate principal amount of the Series 2005A Bonds outstanding on such date (after giving effect to the issuance of any Additional Series 2005A Bonds to be issued on such date and the payment of any Series 2005A Bonds redeemed on such date) plus 35 days' interest thereon, calculated at the Maximum Rate.

All Bonds in each series of Bonds issued from time to time hereunder shall be equally and ratably secured by the Trust Estate with respect to the Bonds of such series, including, without limitation, all right, title and interest of the Issuer in and to the Lease Agreement, and the Receipts and Lease Payments with respect to the Bonds of such series.

The Bonds shall be payable in lawful money of the United States but only from the sources pledged to such purpose. The Bonds are limited obligations of the Issuer payable solely from the Receipts and Lease Payments, which have been pledged and assigned to the Trustee to secure payment of the Bonds in the manner and to the extent provided herein. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THE BONDS. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THE BONDS WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE. THE BONDS WILL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWERS.

Consistent with the foregoing, the Issuer hereby authorizes and creates under this Indenture an issue of (i) Initial Series 2005A Bonds to be designated in aggregate principal amount of up to $75,000,000 and (ii) Initial Series 2005B Bonds to be designated in aggregate principal amount of up to $25,000,000 each entitled to the benefit, security and protection of this Indenture. Additional Bonds shall be issued from time to time in such principal amounts as shall be specified from time to time in the form of Designation of Bond as contemplated by Section 2.09.

(b) *Details of Series A Bonds*. Each Series 2005A Bond shall be dated the date of its original authentication and delivery and shall mature, subject to prior redemption, September 1, 2030. Interest on each Series 2005A Bond shall be computed from the Series 2005A Interest Payment Date next preceding the date of authentication thereof, unless such authentication date (i) is prior to the first Series 2005A Interest Payment Date following the initial delivery of such Bond, in which case interest shall be computed from such initial delivery date, (ii) is after a Series 2005A Record Date and before the subsequent Series 2005A Interest Payment Date, in which case interest shall be computed from the subsequent Series 2005A Interest Payment Date, or (iii) is a Series 2005A Interest Payment Date, in which case interest shall be computed from such Series 2005A Interest Payment Date; provided, that if interest on the Series 2005A Bonds is in default, Bonds shall bear interest from the last date to which interest has been paid. The principal of and redemption or purchase price of the Series 2005A Bonds shall be payable at the corporate trust operations office of the Fiscal Agent upon presentation and surrender of the Series 2005A Bonds. Payments of interest on the Series 2005A Bonds will be mailed to the persons in whose names the Series 2005A Bonds are registered on the register of the Fiscal Agent at the close of business on the Series 2005A Record Date next preceding each Series 2005A Interest Payment Date; provided that, any Holder of a Series 2005A Bond or Series 2005A Bonds in an aggregate principal amount of not less than $500,000 may, by prior written instructions filed with the Fiscal Agent not later than three (3) Business Days prior to the Series 2005A Interest Payment Date (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments for any period be made by wire transfer to an account in the continental United States or other means acceptable to the Fiscal Agent. Series 2005A Bonds will be numbered as determined by the Fiscal Agent and will contain the designation “RA”.

(c) *Delivery of Series 2005A Bonds*. Upon the execution and delivery of this Indenture and receipt by the Trustee of the following items, the Fiscal Agent shall authenticate and deliver the Initial Series 2005A Bonds in accordance with the authorization described in (iv) below:

(i) a copy of the ordinance of the Issuer authorizing the issuance of the Bonds, in an aggregate amount not to exceed $100,000,000 (with the Series 2005A Bonds in an aggregate amount not to exceed $75,000,000) certified by the Issuer;

(ii) the original, executed counterparts of the Lease Agreement, this Indenture, the Remarketing Agreement, the Purchase Agreement and the Credit Agreement;

(iii) the original, executed Letter of Credit from the Bank;

(iv) an authorization and request from the Issuer to the Fiscal Agent to authenticate and deliver up to $75,000,000 in aggregate principal amount of the Initial Series 2005A Bonds to the Underwriter upon receipt by the Trustee, for the account of the Issuer, of $53,925,000 representing the Initial Series 2005A Bond Advance under the Initial Series 2005A Bonds, such advance made in accordance with the procedures set forth in Section 2.10(a);

(v) an Opinion of Bond Counsel, substantially to the effect that the Initial Series 2005A Bonds so specified have been validly authorized, executed and issued under the laws of the State and are not subject to registration under the Securities Act of 1933, as amended (the "Securities Act"), and this Indenture has been duly authorized, executed and delivered by the Issuer and is not subject to qualification under the Trust Indenture Act of 1939, as amended;

(vi) an Opinion of Counsel to the Bank to the effect that the Letter of Credit (1) has been duly authorized, executed and delivered by the Bank, (2) is a valid, binding and enforceable obligation of the Bank and (3) is not subject to registration under the Securities Act;

(vii) a copy of the transcript of the proceeding held in the County validating the Bonds.

(d) *Details of Series 2005B Bonds*. Each Series 2005B Bond shall be dated the date of its original authentication and delivery and shall mature, subject to prior redemption, September 1, 2035. The Series 2005B Bonds shall bear interest at the Series 2005B Interest Rate on the respective aggregate unpaid principal amount of each Series 2005B Bond. Interest on the Series 2005B Bonds will be computed on the basis of a 360-day year consisting of twelve 30-day months. Accrued interest on the Series 2005B Bonds will be paid on each Series 2005B Interest Payment Date. The principal of and redemption or purchase price of the Series 2005B Bonds shall be payable at the corporate trust operations office of the Fiscal Agent upon presentation and surrender of the Series 2005B Bonds. Payments of interest on the Series 2005B Bonds will be mailed to the persons in whose names the Series 2005B Bonds are registered on the register of the Fiscal Agent at the close of business on the Series 2005B Record Date next preceding each Series 2005B Interest Payment Date; provided that, any Holder of a Series 2005B Bond or Series 2005B Bonds in an aggregate principal amount of not less than $500,000 may, by prior written instructions filed with the Fiscal Agent not later than three (3) Business Days prior to the Series 2005B Interest Payment Date (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments for any period be made by wire transfer to an account in the continental United States or other means acceptable to the Fiscal Agent. Series 2005B Bonds will be numbered as determined by the Fiscal Agent and will contain the designation "RB".

(e) *Delivery of Series 2005B Bonds*. Upon the execution and delivery of this Indenture and receipt by the Trustee of the following items, the Fiscal Agent shall authenticate and deliver the Initial Series 2005B Bonds in accordance with the authorization described in (iii) below:

(i) a copy of the ordinance of the Issuer authorizing the issuance of the Bonds, in an aggregate amount not to exceed $100,000,000 (with the Series 2005B Bonds in an aggregate amount not to exceed $25,000,000) certified by the Issuer's Secretary;

(ii) the original, executed counterparts of the Lease Agreement, this Indenture, the Remarketing Agreement, the Purchase Agreement and the Credit Agreement;

(iii) an authorization and request from the Issuer to the Fiscal Agent to authenticate and deliver up to $25,000,000 in aggregate principal amount of the Initial Series 2005B Bonds to the Series 2005B Bond Purchaser upon receipt by the Trustee, for the account of the Issuer, of $17,975,000 representing the Initial Series 2005B Bond Advance under the Initial Series 2005B Bonds, such advance made in accordance with the procedures set forth in Section 2.10(a);

(iv) an Opinion of Bond Counsel, substantially to the effect that the Initial Series 2005B Bonds so specified have been validly authorized, executed and issued under the laws of the State and are not subject to registration under the Securities Act of 1933, as amended (the "Securities Act"), and this Indenture has been duly authorized, executed and delivered by the Issuer and is not subject to qualification under the Trust Indenture Act of 1939, as amended; and

(v) a copy of the transcript of the proceeding held in the County validating the Bonds.

Section 2.02 *Interest on the Series 2005A Bonds*. The Series 2005A Bonds shall bear interest as provided in Section 2.01(b) until paid in full. Interest accrued on the Series 2005A Bonds shall be paid on each Series 2005A Interest Payment Date, commencing on November 1, 2005 in the case of the Initial Series 2005A Bonds. The Series 2005A Interest Rate on the Series 2005A Bonds shall be determined as provided in this Section; provided that no Series 2005A Interest Rate shall exceed the Maximum Rate. The amount of interest payable on any Series 2005A Interest Payment Date (a) shall be computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, whichever may be applicable, and (b) shall be the amount of interest accrued thereon from the preceding Series 2005A Interest Payment Date (or other dates as described in Section 2.01(b)) to, but excluding, the Series 2005A Interest Payment Date on which interest is being paid.

Initially the Series 2005A Bonds shall bear interest at the Weekly Rate, determined by the Remarketing Agent at the time and in the manner set forth below with respect to the Weekly Rate determination method, except that the Series 2005A Bonds shall bear interest at the Series 2005A Interest Rate determined by the Underwriter on or before their date of issuance for a period of up to seven (7) days from their issuance date until the first Weekly Rate determination date. The Series 2005A Interest Rate determination method may be changed from time to time with respect to all of the Bonds at the written direction of the Company, in the manner provided in (b) below. The methods of determining the various Series 2005A Interest Rates are as provided in (a) below.

(a) *Series 2005A Interest Rate Determination Methods*.

(i) *Determination of Weekly Rate*. During each Weekly Rate Period, the Series 2005A Bonds shall bear interest at the Weekly Rate, determined by the Remarketing Agent initially no later than the first day of each Weekly Rate Period and thereafter no later than Wednesday (or the next succeeding Business Day, if such Wednesday is not a Business Day) of each week during such Weekly Rate Period; provided, however, that notwithstanding anything herein to the contrary, the Remarketing Agent may determine the Weekly Rate up to ten (10) days prior to the start of the applicable Weekly Rate Period. The Weekly Rate shall be the minimum rate of interest which the Remarketing Agent determines, in its sole discretion based upon market conditions, would be necessary to sell the Series 2005A Bonds on such date of determination in a secondary market sale at the principal amount thereof, plus, if such sale would not be on a Series 2005A Interest Payment Date, accrued interest.

If the Remarketing Agent shall not have determined a Weekly Rate for any week, the Weekly Rate shall be the same as the Weekly Rate for the immediately preceding week. If for any reason a Weekly Rate so determined for any week shall be held to be invalid or unenforceable by a court of law, the Weekly Rate for such week shall be the rate determined by the Remarketing Agent to be the minimum rate which, if borne by the Bonds, would enable the Remarketing Agent to sell the Series 2005A Bonds on such date of determination at a price equal to the principal amount thereof plus accrued interest. If for any reason, the Weekly Rate cannot be determined for any week as hereinbefore provided, the Weekly Rate for such week shall be a rate per annum equal to the Base Rate.

The first Weekly Rate determined for each Weekly Rate Period shall apply to the period commencing on the first day of such Weekly Rate Period and ending on the next succeeding Wednesday (or the next succeeding Business Day, if such Wednesday is not a Business Day). Thereafter, each Weekly Rate shall apply to the period commencing on Thursday (or if the date of determination is not a Wednesday, on the next following Business Day) and ending on the next succeeding date of determination, or if earlier, on the last day of the Weekly Rate Period.

(ii) *Determination of Flexible Rate Terms and Flexible Rates During Flexible Rate Period*. While the Series 2005A Bonds are in a Flexible Rate Period, there shall be established and reestablished for each Series 2005A Bond a Flexible Rate Term, and each Series 2005A Bond shall bear interest at the Flexible Rate for such Series 2005A Bond during the applicable Flexible Rate Term. The Flexible Rate Term and corresponding Flexible Rate for each Series 2005A Bond shall be determined by the Remarketing Agent initially no later than the first day of the Flexible Rate Period and thereafter on the first day of each succeeding Flexible Rate Term or on a Business Day selected by the Remarketing Agent not more than five Business Days prior to the first day of such succeeding Flexible Rate Term. Each Flexible Rate Term for any Series 2005A Bond shall be a period, not less than one nor more than 270 days, determined by the Remarketing Agent in its sole discretion based upon market conditions to be the period which, together with all other Flexible Rate Terms for all Series 2005A Bonds then Outstanding, will result in the lowest overall interest expense on the Series 2005A Bonds over the next succeeding 270 days; provided, however, that (1) each Flexible Rate Term shall end on either a day which immediately precedes a Business Day or on the day prior to September 1, 2030, (2) if the Remarketing Agent shall not have determined a Flexible Rate Term for any Series 2005A Bond or if for any reason a Flexible Rate Term for any Series 2005A Bond determined by the Remarketing Agent shall be held to be invalid or unenforceable by a court of law, such Flexible Rate Term shall have seven days or, if the last day of such Flexible Rate Term would be September 1, 2030, such Flexible Rate Term shall end on the day prior to September 1, 2030, (3) no Flexible Rate Term shall extend beyond the fifteenth day prior to the stated expiration date of the Letter of Credit then in effect unless a Substitute Letter of Credit has been timely delivered to and accepted by the Trustee pursuant to the terms of Section 5.03, (4) if, pursuant to Section 5.03(b)(iv), the Remarketing Agent has agreed to remarket the Series 2005A Bonds on or after the date of delivery of a Substitute Letter of Credit, no Flexible Rate Term commencing prior to the effective date of such Substitute Letter of Credit shall extend beyond such effective date, and (5) in the event any Flexible Rate Bond is purchased with the proceeds from a draw under the Letter of Credit, the Flexible Rate Term for such Bond will be determined for successive one day terms until such Series 2005A Bond is remarketed and released by the Bank in accordance with Section 3.08(d)(ii). In determining the number of days in each Flexible Rate Term, the Remarketing Agent shall take into account the following factors: (A) existing short-term taxable market rates and indexes of such short-term rates, (B) the existing market supply and demand for short-term securities, (C) existing yield curves for short-term and long-term securities for obligations of credit quality comparable to the Bonds, (D) general economic and market conditions, (E) industry, economic and financial conditions which may affect or be relevant to the Series 2005A Bonds, and (F) such other facts, circumstances and conditions as the Remarketing Agent in its sole discretion determines to be relevant.

The Flexible Rate for each Flexible Rate Term for each Series 2005A Bond shall be the minimum rate of interest which, the Remarketing Agent determines in its sole discretion based upon market conditions, would be necessary to sell the Bonds on such date of determination in a secondary market sale at the principal amount thereof. If the Remarketing Agent shall not have determined a Flexible Rate or if for any reason a Flexible Rate determined by the Remarketing Agent for any Flexible Rate Term shall be held to be invalid or unenforceable by a court of law, the Flexible Rate for such Flexible Rate Term shall be a rate per annum equal to 125% of the rate for 30 day prime commercial paper published in the then most recent edition of *The Bond Buyer* or, if *The Bond Buyer* no longer publishes such information, such other publication or provider of such information as the Remarketing Agent may select.

(b) *Change in Series 2005A Interest Rate Determination Method*.

(i) *Adjustment to Weekly Rate*. The Company, by written direction to the Issuer, the Remarketing Agent, the Trustee, the Fiscal Agent and the Bank, may elect at any time that all of the Series 2005A Bonds shall bear interest at a Weekly Rate. Such direction shall (1) specify the effective date of such adjustment to a Weekly Rate which shall be (A) a Series 2005A Interest Payment Date and (B) not earlier than the fifteenth (15th) day following the third Business Day after the date of receipt by the Trustee of such direction; provided, however, that, if prior to the making of such election, any Series 2005A Bond shall have been called for redemption and

such redemption shall not have theretofore been effected, the effective date of each such Weekly Rate Period shall not precede such redemption date; and (2) be accompanied by an Opinion of Bond Counsel stating that such adjustment is authorized or permitted by this Indenture and the Act.

(ii) *Adjustment to Flexible Rate Period*. The Company, by written direction to the Issuer, the Remarketing Agent, the Trustee, the Fiscal Agent and the Bank, may elect at any time that all of the Series 2005A Bonds shall bear interest at a Flexible Rate or Rates. Such direction shall (1) specify the effective date of the Flexible Rate Period during which the Series 2005A Bonds shall bear interest at Flexible Rates which shall be (A) a Series 2005A Interest Payment Date and (B) not earlier than the fifteenth (15th) day following the third Business Day after the date of receipt by the Trustee of such direction; provided, however, that if, prior to the Company's making of such election, any Series 2005A Bonds shall have been called for redemption and such redemption shall not have theretofore been effected, the effective date of such Flexible Rate Period shall not precede such redemption date; (2) state that on the effective date of the Flexible Rate Period, there will be on deposit in the Series 2005A Interest Reserve Subaccount of the Series 2005A Bond Account Available Moneys in an amount equal to thirty-five (35) days' interest on the Bonds calculated at the Maximum Rate and (3) be accompanied by an Opinion of Bond Counsel stating that such adjustment is authorized or permitted by this Indenture and the Act . Notwithstanding any such direction from the Company, there shall be no adjustment of the Series 2005A Interest Rate on the Bonds to a Flexible Rate unless the Company shall have caused the deposit to the Series 2005A Interest Reserve Subaccount and delivered the opinion or opinions described above.

If the Company's notice complies with either (i) or (ii) of this Section 2.02(b), the Series 2005A Bonds shall bear interest at the rate determined by the proposed Series 2005A Interest Rate determination method from and after the effective date specified in such notice until there is another change as provided in this Section 2.02(b).

(iii) *Adjustment From Flexible Rate Period*. If the Series 2005A Interest Rate Period is being adjusted from a Flexible Rate Period to a Weekly Rate Period, then for any Flexible Rate Bond having a Flexible Rate Term which ends before the effective date of the Weekly Rate Period, the Remarketing Agent shall determine Flexible Rate Terms for such Flexible Rate Bonds which may extend to, but not beyond, such effective date.

(iv) *Adjustment in Series 2005A Interest Rate Determination Method by Remarketing Agent*. At any time during a Weekly Rate Period or a Flexible Rate Period, the Remarketing Agent with the prior written consent of the Company, by written direction to the Issuer, the Trustee, the Fiscal Agent, the Company and the Bank, may direct that the Series 2005A Interest Rate determination method on the Bonds be changed to another Series 2005A Interest Rate determination method, if in the judgment of the Remarketing Agent, such a change would produce the greatest likelihood of the lowest overall interest cost on the Series 2005A Bonds for a period of at least 90 days. Such written direction shall be in such form, be given at such times and contain such information as would be required at the Company's direction pursuant to Section 2.02(b)(i) or (ii), as the case may be, with respect to adjustments to the Weekly Rate Period or Flexible Rate Period, respectively, and such direction shall have the same effect and such adjustments shall take effect on the same date as if the direction had been given or the adjustments had been made by the Company. Such written direction shall also be accompanied by an Opinion of Bond Counsel stating that such adjustment is authorized or permitted by this Indenture and the Act.

(v) *General Provisions Relating to Adjustments in Series 2005A Interest Rate Determination Method*. Anything in this Section 2.02 to the contrary notwithstanding, the method of determining the Series 2005A Interest Rate shall not be changed to a different method for less than all of the Series 2005A Bonds Outstanding.

Notwithstanding any provision of this Section 2.02(b) to the contrary, no change shall be made in the Series 2005A Interest Rate determination method pursuant to this Section 2.02(b) if (1) the Trustee has not received the written consent of the Bank to such change in the Series 2005A Interest Rate determination method; (2) the Trustee shall receive written notice prior to such change that the Opinion of Bond Counsel

required under this Section 2.02(b) has been rescinded or will not be delivered; or (3) any other condition to any such change required under this Section 2.02(b) has not been satisfied. The Trustee shall prepare and the Fiscal Agent shall promptly send a notice to the Bank, the Issuer, the Company, the Remarketing Agent and all Bondholders to whom the Fiscal Agent had sent notice of the change under Section 2.02(c) stating that no change will be made and that the Series 2005A Interest Rate determination method from which the change was attempted will remain in effect.

Notwithstanding any provision of this Section 2.02(b) to the contrary, no Opinion of Bond Counsel shall be required in connection with an adjustment of the Series 2005A Interest Rate determination method for the Bonds if, prior to such adjustment, the Issuer, the Company, the Trustee, the Fiscal Agent, the Remarketing Agent and the Bank have received an Opinion of Bond Counsel which states that all future adjustments in the Series 2005A Interest Rate determination method as set forth in this Indenture are authorized or permitted by this Indenture.

Notwithstanding any provision of this Indenture to the contrary, a Letter of Credit or Substitute Letter of Credit must be in effect at all times that any Series 2005A Bonds are outstanding.

(c) *Notice to Bondholders of Change in Series 2005A Interest Rate Determination Method*. When a change in the Series 2005A Interest Rate determination method is to be made, the Trustee shall prepare and the Fiscal Agent will send a notice to the Bondholders affected thereby, the Remarketing Agent and the Bank by first-class mail at least 15 days but not more than 60 days before the effective date of the change. The notice will state:

(i) that the Series 2005A Interest Rate determination method will be changed;

(ii) any conditions to such change and, upon the satisfaction of such conditions, the effective date of the new Series 2005A Interest Rate determination method;

(iii) that a mandatory repurchase will occur on the effective date of the change as provided in the Bonds; and

(iv) all the information required by this Indenture to be included in a Notice of Mandatory Repurchase as set forth in Section 3.07.

(d) *Notification of Series 2005A Interest Rate and Calculation of Interest*. Promptly following the determination of any Series 2005A Interest Rate, the Underwriter (with respect to the initial Series 2005A Interest Rate determination) and the Remarketing Agent shall give written notice, which may be delivered by facsimile, to the Trustee, the Fiscal Agent and the Company. Upon the request of any Bondholder, the Remarketing Agent shall notify any such Bondholder of each change in the Series 2005A Interest Rate by first class mail. The failure to give any such notice shall not affect the change in the Series 2005A Interest Rate.

The Remarketing Agent shall also notify the Trustee, who shall notify the Fiscal Agent and, upon request, shall also notify the Company, in each case in writing (which may be in telecopy form) or by telephone, promptly confirmed in writing, by 4:00 p.m.:

(i) on the last Wednesday of each month (or if such Wednesday is not a Business Day, on the next succeeding Business Day) in which a Weekly Rate was set, of the Weekly Rate set for each week in such month; and

(ii) on the first Business Day of each Flexible Rate Term, of the length thereof, the Flexible Rate therefor and the principal amount of the Bonds bearing interest at such Flexible Rate.

Using the Series 2005A Interest Rates, and in the case of Flexible Rate Bonds the Flexible Rate Terms, supplied by the Underwriter (with respect to the initial Series 2005A Interest Rate determination), and the Remarketing Agent, the Fiscal Agent shall calculate the amount of interest payable on the Series 2005A Bonds and notify the Trustee of such amount and the Trustee will verify such calculation.

The establishment of the Series 2005A Interest Rates and the Flexible Rate Terms as provided in this Indenture shall be conclusive and binding on the Issuer, the Company, the Bank, the Trustee, the Fiscal Agent,

the Remarketing Agent and the Bondholders, absent manifest error. The calculation and verification of interest payable on the Series 2005A Bonds as provided in this Indenture shall be conclusive and binding on the Issuer, the Company, the Bank, the Trustee, the Remarketing Agent, the Fiscal Agent and the Bondholders.

(e) *Establishment of Alternate Rate*. The Issuer and the Trustee, with the prior written consent of the Remarketing Agent and the Company, shall be authorized to amend or supplement this Indenture pursuant to Section 10.01(k) herein to provide for (or subsequently modify) an alternate rate determination method (the "Alternate Rate"). Such amendment shall specify the period for payment of the interest (an "Alternate Rate Period"), the intervals and dates at which the rate will be set by the Remarketing Agent and the intervals and procedures by which the Bonds may be optionally tendered. These changes will be noted on the Series 2005A Bonds or an amended Series 2005A Bond form will be provided for in the amendment in order to reflect them. The election to change the Series 2005A Interest Rate determination method shall be made by the Company, by written direction to the Issuer, the Remarketing Agent, the Trustee, the Fiscal Agent and the Bank in the manner prescribed by the amendment or supplement to this Indenture. If an Alternate Rate is determined, the Trustee shall be notified of such Alternate Rate prior to the effective date of such rate.

A change to an Alternate Rate from another Series 2005A Interest Rate determination method shall cause a mandatory repurchase of the Series 2005A Bonds. The notice, receipt of the prior written consent of the Bank and Opinion of Bond Counsel requirements of Section 2.02(b) and 2.02(c) shall apply to any such change. The effective date of a change to an Alternate Rate must be the first day of a month (except as provided in the next sentence for Flexible Rate Bonds). If change to an Alternate Rate would take effect after a Flexible Rate Period, then for any Flexible Rate Bond having a Flexible Rate Term which ends before the effective date of the Alternate Rate, the Remarketing Agent shall determine Flexible Rate Terms that will best promote an orderly transition to the Alternate Rate Period, such that the day next succeeding the last day of all Flexible Rate Terms with respect to the Series 2005A Bonds shall be the effective date of the Alternate Rate Period.

Each Alternate Rate shall be set at the minimum rate that the Remarketing Agent determines, in its sole discretion based upon market conditions, would be necessary to sell the Bonds on the day the rate is set at their principal amount plus accrued interest.

The amendment shall establish an index and/or method by which the rate will be set, to be used in the event that for any reason the Remarketing Agent does not set an Alternate Rate for an Alternate Rate Period or a court holds that the rate set for the Alternate Rate Period is invalid or unenforceable.

Section 2.03 *Execution and Authentication*. The Bonds will be signed by the Chairman of the County Commission of the Issuer on the date of the execution and delivery of this Indenture; provided, however, that Additional Bonds issued after the date of this Indenture shall be signed by the Chairman of the County Commission of the Issuer on the respective date of delivery for each of such Bonds. If any officer of the Issuer whose signature is on a Bond no longer holds that office at the time the Fiscal Agent authenticates the Bond, the Bond shall nevertheless be valid. Also, if a person signing a Bond is the proper officer on the actual date of execution, the Bond shall be valid even if that person is not the proper officer on the nominal date of action.

A Bond shall not be valid for any purpose under this Indenture unless and until the Fiscal Agent manually signs the certificate of authentication on the Bond, and such signature shall be conclusive evidence that the Bond has been authenticated under this Indenture.

Section 2.04 *Bond Register*. The Fiscal Agent shall keep a register of Bonds and of their transfer and exchange. Bonds, such as the Series 2005B Bonds, not held under a book-entry system must be presented at the corporate trust office of the Fiscal Agent for registration, transfer and exchange, and Bonds may be presented at that office for payment. Bonds not held under a book-entry system and optionally tendered by their holders must be delivered as specified in Section 3.07(b).

Section 2.05 *Registration and Exchange of Bonds; Persons Treated as Owners; Book-Entry System*.

(a) Bonds may be transferred only on the register maintained by the Fiscal Agent. Upon surrender for transfer of any Bond to the Fiscal Agent, duly endorsed for transfer or accompanied by an assignment duly executed by the holder or the holder's attorney duly authorized in writing and in either case, with an appropriate guarantee of signature conforming to the requirements of *Exhibit A* hereto, the Fiscal Agent shall authenticate a new Bond or Bonds of the same series in an equal aggregate principal amount and registered in the name of the transferee.

Bonds may be exchanged for an equal aggregate principal amount of Bonds of different Authorized Denominations. The Fiscal Agent shall authenticate and deliver Bonds that the Bondholder making the exchange is entitled to receive, bearing numbers not then outstanding.

Except in connection with the optional tender of Series 2005A Bonds pursuant to Section 3.07(b) and the delivery thereof pursuant to Section 3.08, the Fiscal Agent shall not be required to transfer or exchange any Bond during the period beginning 15 days before the mailing of notice calling the Bond or any portion of the Bond for redemption and ending on the redemption date. Bonds subject to redemption or mandatory repurchase may be transferred or exchanged only if the Fiscal Agent provides the new holder thereof with a copy of the notice of redemption or mandatory repurchase, as the case may be.

The holder of a Bond as shown on the register of the Fiscal Agent shall be the absolute owner of the Bond for all purposes, and payment of principal, interest or purchase price shall be made only to or upon the written order of such holder or the holder's legal representative; provided that interest shall be paid to the Person shown on the register as a holder of a Bond on the applicable Series 2005A Record Date or Series 2005B Record Date, as the case may be.

(b) The Fiscal Agent may require the payment by a Bondholder requesting exchange or registration of transfer of any tax or other governmental charge required to be paid in respect of the exchange or registration of transfer but shall not impose any other charge.

(c) The Fiscal Agent or the Remarketing Agent may make appropriate arrangements for the Bonds to be issued or held by means of a book-entry system administered by DTC with no physical distribution of Bonds made to the public. The Series 2005A Bonds will initially be issued by means of a book-entry system administered by DTC with no physical distribution of Bonds made to the public. References in this Section 2.05(c) to a Series 2005A Bond or the Series 2005A Bonds shall be construed to mean the Series 2005A Bond or the Series 2005A Bonds which are held under the book-entry system. One Series 2005A Bond for the Initial Series 2005A Bonds and, unless the Additional Bond Advance procedure is utilized at the direction of the Company, one Bond for each of the Additional Series 2005A Bonds, with the same final maturity date, shall be issued to DTC and immobilized in its custody. A book-entry system shall be employed, evidencing ownership of the Series 2005A Bonds in Authorized Denominations, with transfers of beneficial ownership effected on the records of DTC and the DTC Participants pursuant to rules and procedures established by DTC.

Each DTC Participant shall be credited in the records of DTC with the amount of such DTC Participant's interest in the Series 2005A Bonds. Beneficial ownership interests in the Series 2005A Bonds may be purchased by or through DTC Participants. The holders of these beneficial ownership interests are hereinafter referred to as the "Beneficial Owners". The Beneficial Owners shall not receive Series 2005A Bonds representing their beneficial ownership interests. The ownership interests of each Beneficial Owner shall be recorded through the records of the DTC Participant from which such Beneficial Owner purchased its Series 2005A Bonds. Transfers of ownership interests in the Series 2005A Bonds shall be accomplished by book entries made by DTC and, in turn, by DTC Participants acting on behalf of Beneficial Owners. SO LONG AS CEDE & CO., AS NOMINEE FOR DTC, IS THE REGISTERED OWNER OF THE SERIES 2005A BONDS, THE TRUSTEE AND THE FISCAL AGENT SHALL TREAT CEDE & CO. AS THE ONLY HOLDER OF THE SERIES 2005A BONDS FOR ALL PURPOSES UNDER THIS INDENTURE, INCLUDING RECEIPT OF ALL PRINCIPAL AND

PURCHASE PRICE OF AND INTEREST ON THE SERIES 2005A BONDS, RECEIPT OF NOTICES, VOTING AND REQUESTING OR DIRECTING THE TRUSTEE OR FISCAL AGENT TO TAKE OR NOT TO TAKE, OR CONSENTING TO, CERTAIN ACTIONS UNDER THIS INDENTURE.

Payments of principal, interest and purchase price with respect to the Series 2005A Bonds, so long as DTC or its nominee, Cede & Co., is the only owner of the Series 2005A Bonds, shall be paid by the Fiscal Agent directly to DTC or its nominee, Cede & Co. as provided in the Blanket Issuer Letter of Representation dated January 16, 1997 from the Issuer to DTC (the "Letter of Representation"). DTC shall remit such payments to DTC Participants, and such payments thereafter shall be paid by DTC Participants to the Beneficial Owners. The Issuer, the Company, the Fiscal Agent, the Remarketing Agent and the Trustee shall not be responsible or liable for payment by DTC or DTC Participants, for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants.

In the event that (i) DTC or any successor securities depository determines not to continue to act as securities depository for the Series 2005A Bonds or (ii) the Company or the Remarketing Agent determines that the continuation of the book-entry system of evidence and transfer of ownership of the Series 2005A Bonds would adversely affect their interests or the interests of the Beneficial Owners of the Series 2005A Bonds, the Issuer shall, at the request of the Company or the Remarketing Agent, discontinue the book-entry system with DTC or any successor securities depository. If the Remarketing Agent fails to identify another qualified securities depository to replace DTC or the then existing securities depository, the Fiscal Agent shall use all reasonable efforts to obtain the names, addresses and principal amount of the holders of beneficial interests in the Series 2005A Bonds and authenticate and deliver replacement Bonds in the form of fully registered Series 2005A Bonds to each Beneficial Owner.

THE ISSUER, THE COMPANY, THE REMARKETING AGENT, THE FISCAL AGENT AND THE TRUSTEE SHALL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO ANY DTC PARTICIPANT OR ANY BENEFICIAL OWNER WITH RESPECT TO (I) THE SERIES 2005A BONDS; (II) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DTC PARTICIPANT; (III) THE PAYMENT BY DTC OR ANY DTC PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL OF AND INTEREST ON THE SERIES 2005A BONDS; (IV) THE DELIVERY OR TIMELINESS OF DELIVERY BY DTC OR ANY DTC PARTICIPANT OF ANY NOTICE DUE TO ANY BENEFICIAL OWNER WHICH IS REQUIRED OR PERMITTED UNDER THE TERMS OF THIS INDENTURE TO BE GIVEN TO BENEFICIAL OWNERS; (V) THE SELECTION OF BENEFICIAL OWNERS TO RECEIVE PAYMENTS IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE SERIES 2005A BONDS; OR (VI) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC, OR ITS NOMINEE, CEDE & CO., AS OWNER.

(d) The Fiscal Agent or the Remarketing Agent shall not be limited to utilizing a book-entry system maintained by DTC but may enter into a custody agreement with any bank or trust company serving as custodian (which may be the Fiscal Agent serving in the capacity of custodian) to provide for a book-entry or similar method for the registration and registration of transfer of all or a portion of the Series 2005A Bonds.

SO LONG AS A BOOK-ENTRY SYSTEM OF EVIDENCE OF TRANSFER OF OWNERSHIP OF ALL THE SERIES 2005A BONDS IS MAINTAINED IN ACCORDANCE HEREWITH, THE PROVISIONS OF THIS INDENTURE RELATING TO THE DELIVERY OF PHYSICAL BOND CERTIFICATES SHALL BE DEEMED TO GIVE FULL EFFECT TO SUCH BOOK-ENTRY SYSTEM.

Section 2.06 *Mutilated, Lost, Stolen, Destroyed or Undelivered Bonds*.

(a) If any Bond is mutilated, lost, stolen or destroyed, the Fiscal Agent shall authenticate a new Bond of the same denomination for any mutilated, lost, stolen or destroyed Bond if there shall first be delivered by the Bondholder to the Fiscal Agent at its corporate trust operations office (i) in the case of any mutilated Bond, such mutilated Bond, and (ii) in the case of any lost, stolen or destroyed Bond, evidence of such loss, theft or

destruction reasonably satisfactory to the Issuer, the Company, the Fiscal Agent, the Bank and the Trustee, together with an indemnity from the Bondholder, reasonably satisfactory to the Fiscal Agent. If the Bond has matured and if the evidence and indemnity described above have been provided by the Bondholder, instead of issuing a duplicate Bond, the Fiscal Agent shall pay the Bond without requiring surrender of the Bond and make such requirements as the Fiscal Agent deems fit for its protection, including a lost instrument bond. The Fiscal Agent may charge the Bondholder its reasonable fees and expenses in this connection.

(b) In the event that any Bond purchased pursuant to an optional tender or mandatory repurchase is not delivered by the holder thereof on the date such Bond is deemed purchased, the Issuer shall execute (if necessary) and the Fiscal Agent shall authenticate and deliver a new Bond of the same series of like aggregate principal amount as the Bond deemed purchased, which Bond shall, for all purposes of this Indenture, be deemed to evidence the same debt as the Bond deemed purchased and shall be remarketed, delivered and registered in accordance with Section 3.08(d) hereof.

(c) Every new Bond issued pursuant to this Section 2.06 shall (i) constitute an additional contractual obligation of the Issuer regardless of whether, in the case of (a) above, the mutilated, lost, stolen or destroyed Bond and, in the case of (b) above, the Bond deemed purchased shall be enforceable at any time by anyone, and (ii) be entitled to all of the benefits of this Indenture equally and proportionately with any and all other Bonds of the same series issued and Outstanding hereunder.

(d) All Bonds shall be held and owned on the express condition that the foregoing provisions of this Section 2.06 are exclusive with respect to the replacement or payment of mutilated, lost, stolen or destroyed Bonds and the replacement of any Bond deemed purchased pursuant to an optional tender or mandatory repurchase and, to the extent permitted by law, shall preclude any and all other rights and remedies with respect to the replacement or payment of negotiable instruments or other investment securities without their surrender, notwithstanding any law or statute to the contrary now existing or enacted hereafter.

Section 2.07 *Cancellation of Bonds*. All Bonds paid, redeemed or purchased, either at or before maturity, shall be delivered to the Fiscal Agent when such payment, redemption or purchase is made, and except as otherwise provided herein, shall be cancelled. Whenever a Bond is delivered to the Fiscal Agent for cancellation (upon payment, redemption, defeasance or otherwise), or for transfer, exchange or replacement pursuant to Section 2.05 or 2.06, the Fiscal Agent shall safeguard such Bond for such period of time as may be required by applicable governmental regulations and shall thereafter promptly cancel the Bond and supply evidence of such cancellation to any party so requesting.

Section 2.08 *Temporary Bonds*. Until definitive Bonds are ready for delivery, the Issuer may execute and the Fiscal Agent shall authenticate temporary Bonds substantially in the form of the definitive Bonds, with appropriate variations. The Issuer shall, without unreasonable delay, prepare and the Fiscal Agent shall authenticate definitive Bonds in exchange for the temporary Bonds. Such exchange shall be made by the Fiscal Agent without charge to the Bondholders. Temporary Bonds shall not otherwise be eligible for transfer or exchange under Section 2.05.

Section 2.09 *Additional Bonds*.

(a) Conditioned upon the receipt by the Trustee of the documents listed below, the Issuer may issue Additional Bonds from time to time. Each issue of Additional Bonds shall be delivered pursuant to a completed and executed Designation of Bond, in the form attached to this Indenture as *Exhibit C*, and shall be on a parity and equally and ratably secured under this Indenture with the Bonds of that same series referred to in Section 2.01 and any other Additional Bonds of that same series previously issued, without preference, priority or distinction of any Bonds of a series over any other Bonds of that same series. All such Additional Bonds of a series shall be subject to the same Series 2005A Interest Rate or Series 2005B Interest Rate, as applicable, redemption, tender and Authorized Denomination provisions as the other Bonds of that series and shall be in substantially the same form as the Bonds of that series referred to in Section 2.01. Moneys received by the

Trustee from the sale of Additional Bonds shall be deposited in the Project Fund to be requisitioned by the Company for Costs of the Project. The Trustee shall direct the Fiscal Agent to authenticate and deliver, and the Fiscal Agent shall authenticate and deliver, such Additional Bonds, but only upon receipt by the Trustee of the following:

(i) The purchase price for such Bonds set forth in the Designation of Bonds for the account of the Issuer;

(ii) An original executed counterpart of Designation of Bond;

(iii) For Additional Series 2005A Bonds, an original amendment or supplement to the Letter of Credit executed by the Bank increasing the stated amount thereof available to be drawn by the Trustee for the benefit of the Series 2005A Bondholders to an amount equal to the aggregate principal amount of the Outstanding Series 2005A Bonds (including the Additional Series 2005A Bonds then to be issued and delivered) plus an amount equal to 35 days' interest on all such Series 2005A Bonds, calculated at the Maximum Rate on the basis of actual number of days elapsed in a year of 365 days, and otherwise in form and substance satisfactory to the Trustee, the Underwriter and the Remarketing Agent;

(iv) For Additional Series 2005A Bonds, an Opinion of Counsel to the Bank stating, among other things, that the Letter of Credit, as so amended or supplemented, has been duly authorized, executed and delivered by the Bank, constitutes the valid and binding obligation of the Bank and is enforceable in accordance with its terms subject to customary equity and bankruptcy exceptions, and is not subject to registration under the Securities Act, and otherwise in form and substance satisfactory to the Underwriter and the Remarketing Agent; and

(v) For Additional Series 2005A Bonds, written confirmation from the Rating Agency that the issuance of the Additional Series 2005A Bonds will not cause the rating of the Series 2005A Bonds to be reduced or withdrawn.

(b) The Trustee shall deposit the proceeds of such Additional Bonds in the Project Fund.

Section 2.10 *Additional Bond Advances under Initial Bonds*.

(a) In lieu of issuing certificates for Additional Bonds, as described in Section 2.05(c) and Section 2.09 above, the Company may request advances ("Additional Bond Advances") under each respective series of Initial Bonds certificates by notice to the Trustee, the Underwriter and the Series 2005B Bond Purchaser substantially in the form of *Exhibit D* hereto (the "Bond Advance Notice") delivered contemporaneously with the Designation of Bond. Upon receipt of the Bond Advance Notice from the Company requesting an Additional Bond Advance, the Underwriter and the Series 2005B Bond Purchaser will, so long as no Default has occurred and is continuing, pay the amount of the Additional Bond Advance requested in such Bond Advance Notice to the Trustee for deposit in the Project Fund on the date specified in the related Designation of Bond; provided that (i) for the Series 2005A Bonds, the aggregate amount of such Series 2005A Additional Bond Advances (including the initial advance made under the Series 2005A Initial Bond) together with the outstanding principal amounts of any Additional Series 2005A Bonds will not exceed $75,000,000 and (ii) for the Series 2005B Bonds, the aggregate amount of such Series 2005B Additional Bond Advances (including the initial advance made under the Series 2005B Initial Bond) together with the outstanding principal amounts of any Additional Series 2005B Bonds will not exceed $25,000,000. The records of the Fiscal Agent will be conclusive as to the aggregate amount of Additional Bond Advances requested and made, absent manifest error. The Trustee shall direct the Fiscal Agent to endorse on the schedule attached to each of the certificates for the respective Initial Bonds the date and amount of each such Additional Bond Advance and each principal payment on and redemption in part of the respective Initial Bonds and the resulting principal amount, and the Fiscal Agent will so endorse such Initial Bonds, but only upon receipt by the Trustee of the following:

(i) The amount of the Additional Bond Advances for each respective series of Initial Bonds set forth in the Bond Advance Notice;

(ii) For Additional Bond Advances under the Series 2005A Bonds, an original amendment or supplement to the Letter of Credit executed by the Bank increasing the stated amount thereof available to be drawn by the Trustee for the benefit of the Series 2005A Bondholders to an amount equal to the aggregate principal amount of the Outstanding Series 2005A Bonds (including the Series 2005A Additional Bond Advance then to be endorsed) plus an amount equal to 35 days' interest on all such Series 2005A Bonds, calculated at the Maximum Rate on the basis of actual number of days elapsed in a year of 365 days, and otherwise in form and substance satisfactory to the Trustee, the Underwriter and the Remarketing Agent; and

(iii) For Additional Bond Advances under the Series 2005A Bonds, an Opinion of Counsel to the Bank stating, among other things, that the Letter of Credit, as so amended or supplemented, has been duly authorized, executed and delivered by the Bank, constitutes the valid and binding obligation of the Bank and is enforceable in accordance with its terms subject to customary equity and bankruptcy exceptions, and is not subject to registration under the Securities Act, and otherwise in form and substance satisfactory to the Underwriter and the Remarketing Agent.

Section 2.11 *Conversion of Series 2005B Bonds to Series 2005A Bonds*.

(a) For so long as Series 2005A Bonds are outstanding and backed by a Letter of Credit, the Series 2005B Bonds shall, at the option of the Company and with the written consent of the Bank and the Series 2005B Bond Purchaser, be convertible, at any time, in whole or in part into Series 2005A Bonds ("Series 2005A Conversion Bonds"). The principal amount of the Series 2005A Conversion Bonds to be issued shall be equal to the principal amount of Series 2005B Conversion Bonds (as defined below) tendered for conversion in accordance with paragraph (b) below. The Series 2005A Conversion Bonds shall have the same rights, terms and privileges as and shall be on a parity and equally and ratably secured under this Indenture with the Series 2005A Bonds and any other Additional Series 2005A Bonds previously issued, without preference, priority or distinction of any Series 2005A Bonds over any other Series 2005A Bonds.

(b) If the Company desires to exercise such right of conversion, it shall obtain the written consent of the Series 2005B Bond Purchaser and the Bank and give written notice to the Issuer, the Trustee and the Remarketing Agent (the "Series 2005B Conversion Notice") of its election to convert a stated principal amount of Series 2005B Bonds (the "Series 2005B Conversion Bonds") into Series 2005A Conversion Bonds and deliver to the Trustee its certificate or certificates representing such Series 2005B Conversion Bonds. The Series 2005B Conversion Notice shall also contain a statement confirming that the Series 2005A Conversion Bonds shall be issued in the name of the Series 2005B Bond Purchaser. Within 30 days after the receipt of the Series 2005B Conversion Notice, the Trustee shall direct the Fiscal Agent to authenticate and deliver, and the Fiscal Agent shall authenticate and deliver, such Series 2005A Conversion Bonds to the Remarketing Agent, but only upon receipt by the Trustee of the following:

(i) the surrender of the certificate or certificates representing the Series 2005B Conversion Bonds;

(ii) An original amendment or supplement to the Letter of Credit executed by the Bank increasing the stated amount thereof available to be drawn by the Trustee for the benefit of the Series 2005A Bondholders to an amount equal to the aggregate principal amount of the Outstanding Series 2005A Bonds (including the Series 2005A Conversion Bonds then to be issued and delivered) plus an amount equal to 35 days' interest on all such Series 2005A Conversion Bonds, calculated at the Maximum Rate on the basis of actual number of days elapsed in a year of 365 days, and otherwise in form and substance satisfactory to the Trustee, the Underwriter and the Remarketing Agent;

(iii) an Opinion of Bond Counsel, substantially to the effect that the Series 2005A Conversion Bonds so specified have been validly authorized, executed and issued under the laws of the State and are not subject to registration under the Securities Act of 1933, as amended (the "Securities Act") and this Indenture has been duly authorized, executed and delivered by the Issuer and is not subject to qualification under the Trust Indenture Act of 1939, as amended; and

(iv) An Opinion of Counsel to the Bank stating, among other things, that the Letter of Credit, as so amended or supplemented, has been duly authorized, executed and delivered by the Bank, constitutes the

valid and binding obligation of the Bank and is enforceable in accordance with its terms subject to customary equity and bankruptcy exceptions, and is not subject to registration under the Securities Act, and otherwise in form and substance satisfactory to the Underwriter and the Remarketing Agent.

(c) Upon the issuance of any Series 2005A Conversion Bonds, the aggregate authorized principal amount of Series 2005A Bonds (initially $75,000,000) shall be increased to include any amounts outstanding under the Series 2005B Conversion Bonds.

(d) Upon receipt of the Series 2005A Conversion Bonds, the Remarketing Agent shall remarket the Series 2005A Conversion Bonds pursuant to the Remarketing Agreement at par and shall deliver the proceeds from the sale of the Series 2005A Conversion Bonds to the Series 2005B Bond Purchaser in return for a mutually agreeable fee payable the by Company or the Series 2005B Bond Purchaser to the Remarketing Agent.

ARTICLE III

REDEMPTION, PURCHASE AND REMARKETING

Section 3.01 *Redemption of Bonds*.

(a) Optional Redemption of Bonds. The Bonds may be redeemed by the Issuer (at the direction of the Company (but only with the prior written consent of the Bank)), in whole or from time to time in part, on any Series 2005A Interest Payment Date or Series 2005B Interest Payment Date, as the case may be, or if such Series 2005A Interest Payment Date or Series 2005B Interest Payment Date is not a Business Day, on the next succeeding Business Day, at a redemption price equal to the principal thereof, plus accrued interest to, but not including, the redemption date without premium; provided that any such redemption in part shall be in a minimum amount of $100,000.

(b) *Reserved*.

(c) *Mandatory Redemption of Series 2005A Bonds Upon Demand by Bank*. The Series 2005A Bonds are subject to mandatory redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to, but not including, the redemption date in whole or in part, without premium, at the earliest date for which notice of redemption can be given upon receipt by the Trustee of written notice from the Bank requesting such redemption, specifying the principal amount of the Series 2005A Bonds to be redeemed (if less than all of the Series 2005A Bonds Outstanding are to be redeemed) and stating that (i) an "event of default" with respect to the Company under and as defined in the Credit Agreement has occurred and is continuing, or (ii) it holds as the registered or beneficial owner Bank Bonds; provided, however, only Bank Bonds shall be subject to mandatory redemption pursuant to this clause (ii).

(d) *Reserved*.

(e) *Mandatory Redemption of Series 2005A Bonds on Expiration or Termination of Letter of Credit Without Extension or Providing a Substitute Letter of Credit*. The Series 2005A Bonds are also subject to mandatory redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to, but not including, the redemption date in whole, without premium, on the 10th day prior to the stated expiration date or termination date of the Letter of Credit, if by the 30th day prior to such expiration or termination date the Trustee has not received (1) written evidence that such Letter of Credit has been extended or (2) a Substitute Letter of Credit to be effective on the date of substitution.

(f) *Purchase of Series 2005A Bonds in Lieu of Redemption*. When Series 2005A Bonds are subject to mandatory redemption pursuant to subsections (c) or (d) in this Section 3.01, Bonds paid by the Company or paid from a draw under the Letter of Credit or otherwise paid by or on behalf of the Bank shall be purchased in lieu of redemption on the applicable redemption date at a purchase price equal to the principal amount thereof, plus

accrued interest thereon to, but not including, the date of such purchase, if the Trustee has received a written request on or before said purchase date from the Company or the Bank, as the case may be, specifying that the moneys provided or to be provided by such party shall be used to purchase Series 2005A Bonds in lieu of redemption. No purchase of Series 2005A Bonds by the Company or the Bank pursuant to this Indenture or advance or use of any moneys to effectuate any such purchase shall be deemed to be a payment or redemption of the Series 2005A Bonds or any portion thereof, and such purchase shall not operate to extinguish or discharge the indebtedness evidenced by such Bonds. No Series 2005A Bonds purchased pursuant to this subsection (f) shall be required to be remarketed by the Remarketing Agent pursuant to Section 3.08, unless the Remarketing Agent specifically agrees to undertake such remarketing. Any purchase by the Company or the Bank pursuant to this subsection (f) must be made with Available Moneys.

Section 3.02 *Redemption Date*. The redemption date of Series 2005A Bonds and Series 2005B Bonds to be redeemed pursuant to any optional redemption provisions in Section 3.01(a) shall be a date permitted by such subsection and specified by the Company in the notice delivered pursuant to Section 3.04. The redemption date for mandatory redemptions of the Series 2005A Bonds shall be as specified in Section 3.01(c) or (e), as the case may be, or determined by the Trustee consistently with the provisions thereof.

Section 3.03 *Selection of Bonds To Be Redeemed*. If fewer than all the Bonds of any series are to be redeemed, the Fiscal Agent shall select the Bonds to be redeemed from among the Outstanding Bonds of such series, as set forth below, by random selection or such other method as it deems in its sole discretion to be fair and appropriate, except that Bank Bonds (which shall be purchased and delivered as provided in Section 3.08(d) below), will be selected for redemption prior to any other Series 2005A Bonds. The Fiscal Agent shall make the selection from Bonds of a series not previously called for redemption. The Fiscal Agent shall treat each holder of Bonds of a series as the owner of one Bond for purposes of selection for redemption, and shall select Bonds of a series for redemption by random selection or such other method as it deems in its sole discretion to be fair and appropriate (a) from among the holders of less than $1,000,000 in aggregate principal amount, provided that if there are no such holders, or if, after selection from among such holders such selection has not resulted in redemption of a sufficient amount of Bonds of a series, then (b) from among the holders of $1,000,000 or more in aggregate principal amount of Bonds of a series. The Fiscal Agent shall, on or before the day on which notice of redemption is mailed to the holders, give telephonic notice to the Remarketing Agent of the Series 2005A Bonds selected for redemption and the name of the holder or holders thereof. No portion of a Bond of a series may be redeemed that would result in a Bond which is smaller than the then permitted minimum Authorized Denomination. For this purpose, the Fiscal Agent shall consider each Bond of a series in a denomination larger than the minimum Authorized Denomination permitted by the Bonds at the time to be separate Bonds each in the minimum Authorized Denomination. Provisions of this Indenture that apply to Bonds called for redemption also apply to portions of Bonds of a series called for redemption.

If Flexible Rate Bonds are to be selected for redemption, they shall be selected in the chronological order in which their Mandatory Repurchase Dates occur, beginning with the earliest Mandatory Repurchase Date. If fewer than all Flexible Rate Bonds having the same Mandatory Repurchase Date (selected for redemption as set forth in the immediately preceding sentence) are to be redeemed, the Fiscal Agent shall select the Flexible Rate Bonds to be redeemed on such Mandatory Repurchase Date by lot or other method it deems in its sole discretion to be fair and appropriate.

Notwithstanding anything to the contrary in this Indenture, there shall be no redemption of less than all of the Series 2005A Bonds if there shall have occurred and be continuing an Event of Default.

Section 3.04 *Notice to Trustee; Notice of Redemption*.

(a) If the Company wishes that any Bonds be redeemed pursuant to the optional redemption provisions in Section 3.01(a) hereof, the Company shall notify the Trustee, the Fiscal Agent, the Bank and the Remarketing Agent in writing of the applicable provision, the redemption date, the principal amount of Bonds to be redeemed

and other necessary particulars. The Company shall give such notices at least 45 days before the redemption date or such lesser period which is acceptable to the Trustee and Fiscal Agent, but not less than 30 days.

(b) The Trustee shall prepare and the Fiscal Agent shall send notice of each redemption to each Bondholder whose Bonds are being redeemed, the Company, the Remarketing Agent and the Bank by first-class mail at least 30 days, but not more than 60 days, before each redemption; provided, however, in the case of a mandatory redemption the Trustee shall give notice of such redemption as soon as practicable. The notice shall identify the Bonds (including applicable series), or portions thereof to be redeemed and shall state (i) the type of redemption and the redemption date, (ii) the redemption price, (iii) that the Bonds called for redemption must be surrendered to collect the redemption price, (iv) the address at which the Bonds must be surrendered, (v) that if on the redemption date the Bond Fund contains moneys sufficient to pay the redemption price, interest on the Bonds called for redemption will cease to accrue on the redemption date, (vi) if applicable, the CUSIP number of the Bonds and (vii) any condition to the redemption.

A copy of each notice of redemption of Series 2005A Bonds shall also be sent by the Fiscal Agent by certified or registered mail or by facsimile to each securities depository (each, a "Depository") registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, two Business Days prior to mailing notice to Bondholders and to two national information services which disseminate redemption notices and to each registered owner of $1,000,000 or more of Series 2005A Bonds on the same date notices are mailed to other Bondholders, provided that the Fiscal Agent may, in its discretion, provide for overnight, telecopied or other form of notice to a Depository acceptable to or requested by such Depository. Notwithstanding the foregoing, in the event that the Depository for any of the Bonds to be redeemed is DTC, the Trustee shall follow the procedures for redemption and notice as set forth in DTC's operational arrangements as in effect from time to time.

With respect to any Bonds to be redeemed which have not been presented for redemption within 60 days after the redemption date, the Trustee, at the expense of the Company, shall prepare and the Fiscal Agent shall give a second notice of redemption to the holder of any such Bonds which have not been presented for redemption, by first-class mail, within 30 days after the end of such 60-day period.

Failure by the Fiscal Agent to give any notice of redemption or any defect in such notice as to any particular Bonds shall not affect the validity of the call for redemption of any Bonds in respect of which no such failure or defect has occurred. Any notice mailed as provided in this Indenture shall be conclusively presumed to have been given whether or not actually received by any holder.

Section 3.05 *Payment of Bonds Called for Redemption*. On or before the date fixed for redemption, the Trustee shall cause to be transferred from the Bond Fund to the Fiscal Agent pursuant to Section 4.01 moneys (which shall be Available Moneys in the case of redemption of Series 2005A Bonds) sufficient to pay the redemption price of the Bonds called for redemption, together with accrued interest to, but not including, the redemption date of the Bonds called for redemption. Upon surrender to the Fiscal Agent, Bonds called for redemption shall be paid as provided in this Article at the redemption price provided for in this Article. On the date fixed for redemption, notice having been given in the manner and under the conditions hereinabove provided, the Bonds or portions thereof called for redemption shall be due and payable at the redemption price provided therefor, plus accrued interest to, but not including, such date. On such redemption date, if moneys (which shall be Available Moneys in the case of redemption of Series 2005A Bonds) sufficient to pay the redemption price of the Bonds to be redeemed, plus accrued interest thereon to, but not including, the date fixed for redemption, are held by the Fiscal Agent, interest on the Bonds called for redemption shall cease to accrue; such Bonds shall cease to be entitled to any benefits or security under this Indenture or to be deemed Outstanding; and the holders of such Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof, plus accrued interest to, but not including, the date of redemption.

Section 3.06 *Bonds Redeemed in Part*. Upon surrender of a Bond redeemed in part, the Fiscal Agent shall authenticate for the holder a new Bond or Bonds of the same series in Authorized Denominations equal in aggregate principal amount to the unredeemed portion of the Bond surrendered.

Section 3.07 *Purchase of Series 2005A Bonds*.

(a) *Mandatory Repurchase of Series 2005A Bonds*; Notice. Except as provided in Section 3.07(e), Series 2005A Bonds are subject to mandatory repurchase as follows:

(i) as to any Flexible Rate Bond, on each Series 2005A Interest Payment Date applicable to such Bond at a purchase price equal to 100% of the principal amount thereof plus accrued and unpaid interest thereon to but not including the date of purchase;

(ii) as to any Series 2005A Bond, on any Conversion Date with respect to such Bond at a purchase price equal to 100% of the principal amount thereof plus accrued and unpaid interest thereon to but not including the date of purchase;

(iii) as to any Series 2005A Bond, on the effective date of any Substitute Letter of Credit delivered pursuant to Section 5.03, at a purchase price equal to 100% of the principal amount thereof plus accrued and unpaid interest thereon to but not including the date of purchase; and

(iv) as to any Weekly Rate Bond, on any Series 2005A Interest Payment Date selected by the Company, or if such Series 2005A Interest Payment Date is not a Business Day, on the next succeeding Business Day, at a purchase price equal to 100% of the principal amount thereof plus accrued and unpaid interest thereon to, but not including, the date of purchase; provided that any such mandatory repurchase, except as provided in Section 9.12 hereof, shall be subject to the prior written consent of the Bank.

The Trustee will prepare and the Fiscal Agent will send to the holders of Series 2005A Bonds subject to mandatory repurchase and to the Remarketing Agent, the Bank and the Company a Notice of Mandatory Repurchase at least fifteen (15) days but not more than 60 days before the Mandatory Repurchase Date, except that no such Notice of Mandatory Repurchase will be given to holders of Flexible Rate Bonds if the mandatory repurchase is being made pursuant to Section 3.07(a)(i) above. Any Notice of Mandatory Repurchase will be given by first-class mail and will be substantially in the form attached hereto as *Exhibit B*. If the mandatory repurchase is made in connection with a change to an Alternate Rate, the Notice of Mandatory Repurchase shall include the applicable information required by Section 2.02(e). If the mandatory repurchase is made in connection with a change in the Series 2005A Interest Rate determination method (other than to an Alternate Rate), the Notice of Mandatory Repurchase shall include the applicable information required by Section 2.02(c).

With respect to any Series 2005A Bonds to be purchased which have not been presented for purchase within 60 days after the Mandatory Repurchase Date, the Trustee, at the expense of the Company, shall cause the Fiscal Agent to prepare and send a second notice of purchase to the holder of any such Series 2005A Bonds which have not been presented for purchase, by first-class mail, within 30 days of the end of such 60 day period.

(b) *Optional Tender of Series 2005A Bonds*.

(i) Except as provided in Section 3.07(e), while any Series 2005A Bond (other than a Bank Bond) bears interest at the Weekly Rate, the holder (or while the Bonds are held pursuant to a book-entry system, the Beneficial Owner) of such Series 2005A Bond may elect to tender such Series 2005A Bond (or portion thereof, provided that each of the portion to be purchased and the portion to be retained is in an Authorized Denomination) for purchase at a purchase price equal to 100% of the principal amount of such Series 2005A Bond (or portion thereof), plus accrued and unpaid interest thereon to but not including the date of purchase, on any Business Day (the "Optional Tender Date"), but only upon (A) receipt by the Remarketing Agent by not later than 11:00 a.m. at least seven calendar days or five Business Days, whichever may be earlier, but not more than 30 days, prior to such Optional Tender Date of telephonic (followed, if requested by the Remarketing Agent, by written or facsimile confirmation delivered to the Remarketing Agent no later than the close of business on the next succeeding Business Day) or other written notice from the holder (or while the Series 2005A Bonds are held pursuant to a book-entry system, the DTC Participant through whom such Beneficial Owner holds such Series 2005A Bond) stating (1) the principal amount of the Bond (or portion thereof) to be tendered, (2) the Series 2005A Bond number or other identification satisfactory to the Remarketing Agent, and (3) the Optional Tender Date on which such Series 2005A Bond will be tendered;

and (B) if the Series 2005A Bonds are not being held under a book-entry system, delivery of such Series 2005A Bond (with an appropriate instrument of transfer duly executed in blank) to the Fiscal Agent by 10:00 a.m. on such Optional Tender Date.

(ii) Any notice of optional tender for purchase delivered pursuant to subpart (i) above shall be irrevocable and shall be binding on the holder (or Beneficial Owner, as the case may be) giving such notice or causing the same to be given and on any transferee of such holder.

(iii) Upon receipt by the Remarketing Agent of a notice of optional tender for purchase pursuant to subpart (i) above, the Remarketing Agent shall give prompt telephonic notice thereof, promptly confirmed in writing, including, in particular, notice of the information described in subsections 3.07(b)(i)(A) (1) and (3) above, to the Trustee and the Fiscal Agent.

(c) *Payment for Purchased Series 2005A Bonds*. To the extent that sufficient moneys have been made available therefor by 1:45 p.m. on the Optional Tender Date or the Mandatory Repurchase Date or other day on which Series 2005A Bonds have been successfully remarketed, as applicable (the "Purchase Date") pursuant to Sections 3.08 and 5.02, upon surrender to the Fiscal Agent of Series 2005A Bonds optionally tendered or called for mandatory repurchase as provided herein, the purchase price therefor (as provided in this Section) shall be paid in immediately available funds by the Fiscal Agent or the Remarketing Agent not later than the close of business on the Purchase Date. From and after the Purchase Date or, if later, the date on which such moneys are made available to the Remarketing Agent or the Fiscal Agent, as applicable, interest accruing on such Series 2005A Bonds shall cease to be payable to the prior holder thereof, such Series 2005A Bonds shall cease to be entitled to the benefits or security of this Indenture and to such extent the prior holder shall have recourse solely to the funds held by the Trustee, the Fiscal Agent or the Remarketing Agent for the purchase of such Series 2005A Bonds as provided in Section 4.09.

(d) *Bonds Purchased in Part*. Upon surrender of a Series 2005A Bond purchased in part and receipt by the Fiscal Agent thereof, the Fiscal Agent shall authenticate and deliver to the surrendering holder a new Series 2005A Bond or Series 2005A Bonds in Authorized Denominations equal in aggregate principal amount to the unpurchased portion of the Series 2005A Bond surrendered.

(e) *Limitations on Tenders*.

(i) The Holders or Beneficial Owners shall not have the right or be required, as the case may be, to tender any Series 2005A Bond for purchase on an Optional Tender Date or a Mandatory Repurchase Date (other than a mandatory repurchase in lieu of redemption at the direction of the Bank pursuant to Section 3.01(f) hereof) if, following the occurrence of an Event of Default, the Trustee shall have declared the principal of and interest on the Bonds to be immediately due and payable pursuant to Section 8.02.

(ii) Holders or Beneficial Owners of Series 2005A Bonds called for redemption or mandatory repurchase shall not have the right (without the prior written consent of the Remarketing Agent) to tender such Series 2005A Bonds for purchase on an Optional Tender Date if such Optional Tender Date will occur on or after the 10th day prior to the date fixed for redemption or mandatory repurchase. Notwithstanding the foregoing, holders or Beneficial Owners of Series 2005A Bonds called for redemption shall not have the right in any event to tender such Series 2005A Bonds for purchase on an Optional Tender Date if such Optional Tender Date will occur on or after the second day prior to the date fixed for redemption.

Section 3.08 *Remarketing of Purchased Bonds*.

(a) *Bonds To Be Remarketed*. Series 2005A Bonds purchased pursuant to optional tender or mandatory repurchase shall be remarketed by the Remarketing Agent as provided in this Section except as follows:

(i) Series 2005A Bonds purchased with moneys representing the proceeds of the initial sale of the Series 2005A Bonds (including but not limited to any moneys described in Section 4.04(b) or 4.04(c)) shall be cancelled. The Trustee shall inform the Remarketing Agent when any Series 2005A Bonds are purchased

with such moneys, and, if any such Series 2005A Bonds are delivered to the Remarketing Agent for purchase, the Remarketing Agent shall deliver them to the Fiscal Agent for cancellation.

(ii) Series 2005A Bonds purchased pursuant to an optional tender or a mandatory repurchase and as to which the Remarketing Agent has received a notice of redemption may be remarketed before the date fixed for redemption only if the purchaser receives prior to purchasing such Series 2005A Bond a notice that such Series 2005A Bond is subject to redemption on the date fixed for redemption, notwithstanding the fact that such notice of redemption may be sent to such purchaser after the time period mentioned in Section 3.04(b).

(iii) The Remarketing Agent shall not be required to offer Series 2005A Bonds for sale under this Section 3.08 (A) during the continuance of an Event of Default, or (B)as otherwise provided in the Remarketing Agreement.

(iv) Series 2005A Bonds purchased pursuant to an optional tender and as to which the Remarketing Agent has received a Notice of Mandatory Repurchase may be remarketed before the Mandatory Repurchase Date only if the purchaser receives a copy of the Notice of Mandatory Repurchase prior to purchasing such Series 2005A Bond.

(v) The Remarketing Agent shall not knowingly remarket any Series 2005A Bonds to the Issuer or the Company or any subsidiary or affiliate of either thereof pursuant to this Section 3.08 unless either (A) the entire purchase price is paid from Available Moneys or (B) prior to such sale, the Trustee and the Fiscal Agent shall have received a written opinion of Bankruptcy Counsel to the effect that such purchase would not result in a preferential payment pursuant to the provisions of Section 547 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq*.

(b) *Remarketing Effort*. Except as provided in subsection (a) above or except to the extent the Company directs the Remarketing Agent not to do so, the Remarketing Agent shall (i) use reasonable best efforts to remarket on or prior to any scheduled purchase date all Series 2005A Bonds tendered or to be purchased pursuant to Section 3.07 (a "Scheduled Purchase Date"), and (ii) to the extent such Series 2005A Bonds are not remarketed on the Scheduled Purchase Date, continue to use reasonable best efforts to remarket such Series 2005A Bonds, upon the terms and subject to the conditions of the Remarketing Agreement, for purchase on a Business Day after such Scheduled Purchase Date (an "Unscheduled Purchase Date").

As early as practicable but not later than 9:00 a.m. on each Scheduled Purchase Date and each Unscheduled Purchase Date, the Remarketing Agent shall notify the Fiscal Agent by telephone of (A) the amount of funds it has received from the remarketing of such Series 2005A Bonds (the "Remarketing Proceeds"), and (B) if the Series 2005A Bonds are not held pursuant to a book-entry system, the information to enable the Fiscal Agent to prepare new Series 2005A Bond certificates with respect to Series 2005A Bonds that were remarketed. If the Remarketing Agent has received Remarketing Proceeds with respect to all of the Series 2005A Bonds to be remarketed on a Scheduled Purchase Date, it shall transfer such Remarketing Proceeds to the owners tendering such Series 2005A Bonds for purchase as provided in subsection (c) below. If the Remarketing Agent has not received Remarketing Proceeds with respect to all of such Series 2005A Bonds to be remarketed on a Scheduled Purchase Date or has received Remarketing Proceeds with respect to all or a portion of Series 2005A Bonds remarketed on an Unscheduled Purchase Date, it shall transfer to the Trustee for redelivery to the Fiscal Agent the Remarketing Proceeds which the Remarketing Agent has received as provided in subsection (c) below. The Fiscal Agent shall immediately notify the Trustee and the Company by telephone, promptly confirmed in writing, of the amount of such Remarketing Proceeds and the Trustee shall, if required, take action as set forth in Section 5.02(a). If the Fiscal Agent shall fail to receive the notice described in the first sentence of this paragraph from the Remarketing Agent by 9:00 a.m. on any Scheduled Purchase Date, the Fiscal Agent shall contact the Remarketing Agent by telephone to confirm the information required to be provided in such notice. Upon such confirmation by the Fiscal Agent, the Fiscal Agent shall notify the Trustee in the manner set forth above, and the Trustee shall, if required, take action as set forth in Section 5.02(a).

(c) *Remarketing Proceeds*. If the Remarketing Agent has received from the purchasers thereof Remarketing Proceeds for the remarketing of all Series 2005A Bonds to be remarketed on a Scheduled Purchase Date, the

Remarketing Agent shall promptly forward such Remarketing Proceeds by wire transfer (or in such other manner as is acceptable to the Remarketing Agent) to the owners tendering such Series 2005A Bonds for purchase. Except as otherwise provided below with respect to Bank Bonds, until such transfer, all such Remarketing Proceeds shall be deposited in a separate, segregated account of the Remarketing Agent for application in accordance with the provisions of this Section 3.08, and until so applied shall be held uninvested in trust for the benefit of the holders tendering such Series 2005A Bonds for purchase.

If the Remarketing Agent has not received Remarketing Proceeds with respect to all of the Series 2005A Bonds to be remarketed on a Scheduled Purchase Date or has received Remarketing Proceeds from the remarketing of all or a portion of the Bonds to be remarketed on an Unscheduled Purchase Date, the Remarketing Agent will promptly forward all of the Remarketing Proceeds which it has received, if any, by wire transfer (or in such other manner as is acceptable to the Remarketing Agent and the Trustee) to the Trustee for delivery to the Fiscal Agent for payment to the owners tendering such Series 2005A Bonds for purchase. Except as otherwise provided below with respect to Bank Bonds, upon receipt by the Trustee and the Fiscal Agent, all such Remarketing Proceeds shall be deposited in a separate, segregated account of the Bond Fund for application in accordance with the provisions of this Section 3.08 and Article IV hereof and, until so applied, shall be held in trust for the benefit of the owners tendering such Series 2005A Bonds for purchase.

(d) *Delivery of Purchased Bonds*. Series 2005A Bonds purchased pursuant to Section 3.07 shall be delivered as follows:

(i) Series 2005A Bonds (other than Bank Bonds) purchased with Remarketing Proceeds shall be delivered to the purchasers thereof upon receipt of payment therefor. Prior to such delivery, the Fiscal Agent shall provide for registration of transfer to the Holders, as provided in a written notice from the Remarketing Agent; and

(ii) All Bank Bonds shall be registered in the name of the Company, subject to the pledge to the Bank and shall be delivered to and held by the Fiscal Agent pursuant to the Credit Agreement. Upon receipt of Remarketing Proceeds in respect of the sale of Bank Bonds, the Fiscal Agent shall notify the Bank and the Company of such receipt. Upon receipt of notice by the Fiscal Agent from the Bank by telephone, telecopy or telex, promptly confirmed in writing, that the Series 2005A Bonds have ceased to be Bank Bonds and that the amount of the Letter of Credit has been reinstated as provided therein, the Fiscal Agent shall remit the Remarketing Proceeds as directed by the Bank and release the Bank Bonds and deliver them to the purchasers thereof in accordance with Section (d)(i) above. The Fiscal Agent shall hold such Remarketing Proceeds in a segregated account in trust for the benefit of the Bank except that if the Letter of Credit is not reinstated as provided in the Letter of Credit, then the Fiscal Agent shall hold such funds for the benefit of the purchasers which provided such Remarketing Proceeds.

ARTICLE IV

PAYMENT OF BONDS AND CREATION OF FUNDS

Section 4.01 *Payment of Series 2005A Bonds*. The Trustee shall direct the Fiscal Agent to make payments when due of principal of and interest on, or the redemption price of, the Series 2005A Bonds, and the Fiscal Agent or the Remarketing Agent, as applicable, shall make payments of the purchase price of Series 2005A Bonds purchased pursuant to an optional tender or a mandatory repurchase:

(a) *first*, with respect to the Series 2005A Bonds, (but only with respect to payments of purchase price and except as otherwise directed pursuant to Section 3.08(a)(i)) from Remarketing Proceeds under Section 3.08, excluding any proceeds from a remarketing to the Issuer, the Company or any subsidiary or affiliate of either thereof;

(b) *second*, with respect to the Series 2005A Bonds, (but only with respect to payments of interest on Flexible Rate Bonds except as otherwise provided in Section 4.04(c)) from any moneys held by the Trustee in the Series 2005A Interest Reserve Subaccount of the Series 2005A Bond Account of the Bond Fund which constitute Available Moneys;

(c) *third*, with respect to the Series 2005A Bonds, from moneys drawn by the Trustee under the Letter of Credit and deposited in the Series 2005A Bond Account of the Bond Fund (other than moneys so drawn and deposited in the Series 2005A Interest Reserve Subaccount);

(d) *fourth*, subject to the provisions of Section 4.04(b), from any moneys which constitute Available Moneys in the Project Fund directed to be paid into the Series 2005A Bond Account of the Bond Fund in accordance with the provisions of Section 4.08;

(e) *fifth*, from any other Available Moneys held in the Series 2005A Bond Account of the Bond Fund; and

(f) *last*, from any other moneys available to the Fiscal Agent or the Trustee including, without limitation, (1) moneys paid by the Company pursuant to Section 4.3 of the Lease Agreement.

Notwithstanding the foregoing, however, payments of purchase price, principal and interest on Bank Bonds shall be paid only from the first and last categories of moneys. The proceeds of investments of any moneys in any of these categories may be used to the same extent as the moneys invested could be used.

Section 4.01A. *Payment of Series 2005B Bonds*. After making the payments when due of principal of and interest on, or the redemption price of, the Series 2005A Bonds as required pursuant to Section 4.01 above, the Trustee shall direct the Fiscal Agent to make payments when due of principal of and interest on, or the redemption price of, the Series 2005B Bonds from any moneys paid by the Company pursuant to Section 4.3 of the Lease Agreement.

Section 4.02 *Creation of Bond Fund*. There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated "Bernalillo County Industrial Revenue Bonds (Tempur Production USA, Inc. Project) Bond Fund," in which there is established a (i) Series 2005A Bond Account and (ii) a Series 2005B Bond Account. The money and securities in such Fund shall be held in trust by the Trustee and applied as herein provided and, until such application, the money and securities in each such Fund shall be subject to a lien and charge in favor of the Bondholders of each series, respectively.

Section 4.03 *Payments Into the Bond Fund and Bond Accounts*. (a) There shall be deposited in the Series 2005A Bond Account, as and when received:

(i) 75% (or such greater percentage as is required to pay all amounts then due on the Series 2005A Bonds and to reimburse the Bank for amounts drawn on the Letter of Credit to make such payments) of all payments specified in Section 4.3 of the Lease Agreement;

(ii) all moneys received from a draw under the Letter of Credit;

(iii) with respect to the Series 2005A Interest Reserve Subaccount (established under the Series 2005A Bond Account) only, all moneys drawn under the Letter of Credit pursuant to Section 5.02(b) and 5.02(c), and all moneys deposited to meet the requirements of Section 2.02(b)(ii)(2);

(iv) 75% (or such greater percentage as is required to pay all amounts then due on the Series 2005A Bonds and to reimburse the Bank for amounts drawn on the Letter of Credit to make such payments) of all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease Agreement (other than Sections 4.5, 6.2 and 7.4 thereof) which are required, or which are accompanied by directions that such moneys are, to be paid into the Bond Fund;

(v) 75% (or such greater percentage as is required to pay all amounts then due on the Series 2005A Bonds and to reimburse the Bank for amounts drawn on the Letter of Credit to make such payments) of any amount in the Project Fund directed to be paid into the Bond Fund in accordance with the provisions of Section 4.08.

Notwithstanding anything herein to the contrary, the Trustee shall not deposit any moneys in the Series 2005A Interest Reserve Subaccount except as set forth in (iii) above. To the extent that moneys described in (i), (iv), or

(v) above would not constitute Available Moneys at the time of such deposit, the Trustee shall create separate subaccounts in the Series 2005A Bond Account in which moneys described in each of such (i), (iv) and (v) above shall be held until such moneys constitute Available Moneys. The Trustee shall create a separate subaccount in the Series 2005A Bond Account for and shall not commingle moneys described in Section 4.01(c) with any other moneys hereunder. The Trustee shall create a separate subaccount in the Series 2005A Bond Account for and shall not commingle moneys described in Section 4.01(d) with any other moneys hereunder.

(b) The Trustee shall apply all amounts received in accordance with subsections (a)(i) and (a)(iv) above on each Series 2005A Interest Payment Date in the following order:

(i) first to the payment of the principal of and interest payable on the Series 2005A Bonds on such Series 2005A Interest Payment Date; provided, however, to the extent such principal and interest are paid on the Series 2005A Bonds pursuant to a draw under the Letter of Credit, an amount equal to such draw shall be paid by the Trustee to the Bank; and

(ii) second, all remaining amounts shall be retained on deposit in the Bond Fund.

(c) There shall be deposited in the Series 2005B Bond Account, as and when received, but only if the debt service due on the Series 2005A Bonds and amounts due under the Credit Agreement are fully paid:

(i) 25% of all payments specified in Section 4.3 of the Lease Agreement;

(ii) 25% of all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease Agreement (other than Sections 4.5, 6.2 and 7.4 thereof) which are required, or which are accompanied by directions that such moneys are, to be paid into the Bond Fund; and

(iii) 25% of any amount in the Project Fund directed to be paid into the Bond Fund in accordance with the provisions of Section 4.08.

(d) The Trustee shall apply all amounts received in accordance with subsections (c)(i) and (c)(ii) above on each Series 2005B Interest Payment Date in the following order:

(i) first to the payment of the principal of and interest payable on the Series 2005B Bonds on such Series 2005B Interest Payment Date; and

(ii) second, all remaining amounts shall be retained on deposit in the Bond Fund.

(e) So long as any of the Bonds issued hereunder are Outstanding, the Issuer shall deposit, or cause to be paid to the Trustee for deposit in the Bond Fund for its account, sufficient sums from the amounts derived from the Lease Agreement promptly to pay when due the principal of all Bonds (whether at maturity, upon redemption or acceleration or otherwise), interest on the Bonds and the purchase price of the Series 2005A Bonds as the same become due and payable. The Issuer makes no representation or warranty that the amount deposited shall be adequate to make all payments when due.

Section 4.04 *Use of Moneys in Bond Fund*.

(a) Except as provided in subsections (b) and (c) of this Section 4.04 and in Section 4.10, moneys in the Bond Fund shall be used solely for the payment of the principal of and interest on the Bonds as the same shall become due and payable whether at maturity, upon redemption or otherwise and for the purchase price of the Series 2005A Bonds as the same shall become due, and the Trustee shall transfer to the Fiscal Agent sufficient funds therefrom to accomplish such payment in accordance with the provisions of the Bonds and this Indenture; provided, however, that to the extent that principal, interest or purchase price of the Series 2005A Bonds is paid with proceeds of a draw under the Letter of Credit and the Company does not reimburse the Bank directly, the Trustee shall promptly reimburse the Bank from funds on deposit in the Series 2005A Bond Account in the Bond Fund (other than funds on deposit in the Series 2005A Interest Reserve Subaccount, Remarketing Proceeds or proceeds from a draw on the Letter of Credit) in accordance with written instructions given from time to time to the Trustee by the Bank.

(b) Moneys deposited pursuant to Section 4.08 into the Bond Fund, and any income or other gain from the investment thereof, shall be applied by the Trustee in whole or in part at the direction of the Company (i) to pay the principal upon any optional redemption of Bonds pursuant to Section 3.01 or, with respect to the Series 2005A Bonds, to reimburse the Bank for any draws under the Letter of Credit, (ii) to pay the principal portion of the purchase price of Bonds purchased pursuant to Section 3.07(a)(iv), or (iii) with the written consent of the Bank, in any other manner which, as clearly stated in an Opinion of Bond Counsel furnished by the Company and addressed to the Issuer, the Bank and the Trustee, will not impair the validity under the Act of the Bonds. Any Bonds purchased or redeemed by the Trustee in accordance with this Section 4.04(b) shall be cancelled, and the Company shall receive a credit corresponding to such Bonds and to any deposit in the Bond Fund as contemplated by this Section against its obligations to make payments under the Lease Agreement.

(c) Amounts on deposit in the Series 2005A Interest Reserve Subaccount shall be applied in accordance with this Section 4.04(c).

(i) While the Series 2005A Bonds bear interest at a Flexible Rate, the Trustee shall be authorized, without further direction from the Issuer or the Company, to pay to the Fiscal Agent, for the payment of interest on the Flexible Rate Bonds on each Series 2005A Interest Payment Date, moneys on deposit in the Series 2005A Interest Reserve Subaccount.

(ii) When Flexible Rate Bonds shall no longer bear interest at a Flexible Rate, the amount then held in the Series 2005A Interest Reserve Subaccount pursuant to this Section shall, upon the written instructions of the Company, be supplied by the Trustee to the Fiscal Agent for the payment of interest on the Series 2005A Bonds or to reimburse the Bank for draws under the Letter of Credit pursuant to such instructions, or to the purchase or redemption of Bonds in the manner described in and subject to Section 4.04(b).

Section 4.05 *Custody of Bond Fund*. The Bond Fund shall be held in the custody of the Trustee but in the name of the Issuer. The Issuer hereby authorizes and directs (a) the Trustee, in accordance with the terms of this Indenture, to withdraw sufficient funds from the Bond Fund to pay the principal of, interest on and the purchase price of the Bonds as the same become due and payable, and to withdraw from the Bond Fund funds sufficient to pay any other amounts payable therefrom as the same become due and payable (provided, however, that amounts on deposit in the Series 2005A Interest Reserve Subaccount shall be used by the Trustee solely to pay to the Fiscal Agent for the payment of interest on the Flexible Rate Bonds when due or in such manner as the Trustee may otherwise be instructed pursuant to Section 4.04(c)), and (b) the Fiscal Agent to use such funds transferred to it to make such payments, which authorization and direction the Trustee and the Fiscal Agent hereby accept; provided, however, that to the extent such principal, interest or purchase price is paid with proceeds of a draw under the Letter of Credit and the Company does not reimburse the Bank directly, the Trustee shall promptly reimburse the Bank from (i) funds on deposit in the Series 2005A Bond Account other than funds on deposit in the Series 2005A Interest Reserve Subaccount, (ii) Remarketing Proceeds to be paid to former holders in the case of the Series 2005A Bonds which were purchased with the proceeds from a draw on the Letter of Credit, or (iii) proceeds from a draw on the Letter of Credit, which were not required in order to pay the principal, interest or purchase price of the Series 2005A Bonds, in accordance with written instructions given from time to time to the Trustee by the Bank.

Section 4.06 *Creation of Project Fund*. There is hereby created by the Issuer and ordered established with the Trustee a trust fund designated “Bernalillo County, New Mexico Industrial Revenue Bonds (Tempur Production USA, Inc. Project) Project Fund,” within which there shall be established a Cost of Issuance Account and a Construction Account. Unless otherwise designated, reference to the Project Fund shall be to the Construction Account. The Project Fund shall be held in the custody of the Trustee but in the name of the Issuer. The money and securities in the Project Fund shall be held in trust by the Trustee and applied as provided herein and in the Lease Agreement, and, until such application, the money and securities in such Project Fund shall be subject to a lien and charge in favor of, first, the Series 2005A Bondholders and, second, the Bank, and then the Series 2005B Bondholders.

Section 4.07 *Payments Into the Project Fund; Disbursements*.

(a) The proceeds of the issuance and delivery of the Initial Bonds received by the Issuer shall be paid to the Trustee and shall be deposited by the Trustee into the Construction Account.

(b) The proceeds of all Additional Bonds received by the Issuer shall be paid to the Trustee and shall be deposited by the Trustee as follows:

(i) the amount, if any, of such proceeds required to be deposited in the Cost of Issuance Account in accordance with written directions of the Issuer; and

(ii) the balance of such proceeds shall be deposited into the Construction Account.

(c) The Trustee shall disburse moneys on deposit in the Project Fund from time to time to pay or as reimbursement for payment made for the Costs of the Project (other than Costs of Issuance), in each case within **3** Business Days after receipt by the Trustee of written disbursement requests of the Company in substantially the form of **Exhibit E** hereto, signed by the Company Representative. In making payments pursuant to this Section, the Trustee may rely upon such written requests and accompanying certificates and statements and shall not be required to make any independent investigation in connection therewith. If the Issuer so requests, a copy of each written disbursement request submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the Issuer. The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and shall file periodic statements of activity regarding the Project Fund with the Company and the Bank Administrative Agent.

The Trustee agrees to accept and act upon facsimile transmission of written disbursement requests pursuant to this Section 4.07, provided however, that (a) the Company, subsequent to such facsimile transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee in a timely manner, (b) such originally executed instructions or directions shall be signed by a person as my be designated and authorized to sign for the Company or in the name of the Company, by an authorized representative of the Company, and (c) the Company shall provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing.

Section 4.08 *Completion of Project and Disposition of Project Fund Balance*. The Company shall deliver to the Trustee, within **90** days after completion of the Project, a certificate of a Company Representative: (i) stating that the Project has been fully completed substantially in accordance with the plans and specifications for the Project, as then amended, and the date of completion of the Project; and (ii) stating that the Costs of the Project have been fully paid for and no claim or claims exist against the Issuer or the Company or against the Project out of which a lien based on furnishing labor or material exists or might ripen; provided, however, there may be excepted from the foregoing statement any claim or claims out of which a lien exists or might ripen in the event that the Company intends to contest such claim or claims in accordance with the Lease Agreement, in which event such claim or claims shall be described; provided, further, that it shall be stated that moneys are on deposit in the Project Fund or are available through enumerated bank loans (including letters of credit) or other sources sufficient to make payment of the full amount which might in any event be payable in order to satisfy such claim or claims. As soon as practicable and in any event not later than the earlier of 60 days from the date of the certificate referred to in the preceding sentence or 18 months from the date of closing of the issuance and sale of the Initial Bonds, any balance remaining in the Project Fund (except amounts the Company shall have directed the Trustee to retain for any Cost of Project not then due and payable) shall without further authorization be transferred by the Trustee from the Project Fund for deposit in the Bond Fund and used in the manner provided in Section 4.04(b).

Section 4.09 *Moneys To Be Held in Trust*. All money that the Trustee shall have withdrawn from the Bond Fund or shall have received from any other source and set aside or transferred to the Fiscal Agent for the purpose of paying any of the Bonds, either at the maturity thereof or by purchase (other than as provided in Section 3.08) or call for redemption or for the purpose of paying any interest on the Bonds, shall be held in trust for the respective Holders. Moneys received by the Remarketing Agent, the Fiscal Agent or the Trustee from the sale of

a Series 2005A Bond under Section 3.08 or from the purchase of any Series 2005A Bond shall be held segregated from other funds held by the Remarketing Agent, the Fiscal Agent or the Trustee in trust for the benefit of the Person from whom such Series 2005A Bond was purchased and shall not be invested while so held. Any money that is so set aside or transferred and that remains unclaimed by the Holders for a period of five (5) years after the date on which such Bonds have become payable shall be treated as abandoned property pursuant to the provisions of applicable State law and the Trustee, the Fiscal Agent or the Remarketing Agent, as applicable, shall report and remit such property according to the requirements of State law and thereafter the Holders shall look only to the Fund to which such money may be transferred for payment and then only to the extent of the amounts so received, without any interest thereon, and the Trustee, the Fiscal Agent, the Remarketing Agent and the Issuer shall have no responsibility with respect to such money.

Section 4.10 *Payment to Company From Bond Fund or Project Fund.* Any amounts remaining in the Bond Fund, the Construction Account or the Costs of Issuance Account after payment in full of the principal of and interest on the Outstanding Bonds, the fees, charges and expenses of the Issuer, the Trustee, the Fiscal Agent, the Remarketing Agent and the Bank (including without limitation the fees and reasonable expenses of their respective counsel) and all other amounts required to be paid hereunder and under the Credit Agreement shall be paid immediately to the Company.

Section 4.11 *Investment of Moneys*. To the extent permitted by law and at the telephonic or oral direction (confirmed in writing) of a Borrower Representative, and except as otherwise provided herein, the Trustee or the Fiscal Agent, as the case may be, shall invest and reinvest moneys held by it representing proceeds of draws under the Letter of Credit, moneys on deposit in the Bond Fund and amounts on deposit in the Series 2005A Interest Reserve Subaccount of the Bond Fund (but only while Series 2005A Bonds bear interest at a Flexible Rate) only in U.S. Government Obligations (or in a mutual fund composed solely of U.S. Government Obligations which at the time of any such investment has the highest securities rating from each Rating Agency then rating the Series 2005A Bonds), maturing at such times as such amounts shall be needed for the purposes thereof, with a term of the lesser of 30 days or such earlier date as needed for payment in accordance with this Indenture. Unclaimed moneys held by the Trustee, the Fiscal Agent or the Remarketing Agent under Section 4.09 shall be held uninvested by the Trustee, the Fiscal Agent or the Remarketing Agent, as the case may be. Moneys held by the Trustee in the Project Fund shall be invested and reinvested by the Trustee at the telephonic or oral direction (confirmed in writing) of a Company Representative, to the extent permitted by law, in Permitted Investments. The Trustee may conclusively rely upon such instructions as to both the suitability and legality of the directed investments.

To the extent that the Trustee or the Fiscal Agent, as the case may be, has not received written directions from the Company regarding investment of moneys, the Trustee or the Fiscal Agent, as the case may be, shall, until such directions are received, invest such moneys pursuant to standing written instructions delivered to the Trustee or the Fiscal Agent, as the case may be, by the Company upon the original deposit of moneys in the Project Fund, as such instructions may be amended from time to time.

Subject to the provisions hereof, investments in any and all Funds and accounts created by this Indenture may be commingled for purposes of making, holding, and disposing of investments. Notwithstanding provisions herein for transfer to or holding in particular Funds and accounts amounts received; provided that, notwithstanding such commingling, the Trustee shall at all times account for such investments in the Funds and accounts to which they are credited and otherwise as provided in this Indenture. The Trustee or the Fiscal Agent, as applicable, may make investments permitted by this Article through or from its own bond department or the department of any bank, trust company or affiliate under common control with the Trustee or the Fiscal Agent, as applicable. Investments will be made so as to mature or be subject to redemption at the option of the holder on or before the date or dates that the Trustee or the Fiscal Agent, as applicable, or the Company, as appropriate, anticipates that moneys from the investments will be required. Investments shall be registered in the name of the Trustee or the Fiscal Agent, as applicable, or its nominee and held by or under the control of the Trustee or the Fiscal Agent, as applicable.

All such investments shall be held by or under the control of the Trustee or the Fiscal Agent, as applicable, and while so held shall be deemed a part of the particular Fund or account in which held. Interest earned and profits realized by reason of any investment of amounts on deposit in any Fund or account established pursuant to this Indenture shall be retained in such Fund or account, except that earnings and profits on amounts in the Cost of Issuance Account shall be credited to the Construction Account.

The Trustee or the Fiscal Agent may sell or redeem any obligation in which moneys shall have been invested as in this Section 4.11 provided to the extent necessary to provide cash in the respective Funds or accounts, to make any payments required to be made therefrom or to facilitate the transfer of money between various Funds and accounts as may be required or permitted from time to time pursuant to the provisions of this Indenture.

In computing the value of the assets of any Fund or account established hereunder, investments and accrued interest thereon shall be deemed a part thereof. Such investments shall be valued at amortized cost or current market value, whichever is the lower, or at the redemption price thereof, if then redeemable at the option of the holder (in any case net of the cost of liquidating such investments).

Neither the Trustee, the Fiscal Agent nor the Issuer shall be liable for any depreciation in the value of any Permitted Investments in which moneys of the Funds or accounts created by this Indenture shall be invested, or for any loss arising from any investment permitted hereby. The investments authorized by this Section 4.11 shall at all times be subject to the provisions of applicable law, as amended from time to time.

Although the Issuer and the Company each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and the Company hereby agree that confirmations of permitted investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

Section 4.12 *Reserved*.

ARTICLE V

LETTER OF CREDIT

Section 5.01 *Requirements for Letter of Credit*. The Company has agreed (a) upon the authentication and delivery of the Initial Series 2005A Bonds, to deliver to the Trustee the Letter of Credit, issued by the Bank in favor of the Trustee and for the benefit of the holders of the Bonds (other than Bank Bonds), (b) to cause the Letter of Credit to be amended as contemplated by Sections 2.01 and 2.09 hereof prior to the issuance of Additional Series 2005A Bonds, and (c) to ensure that a Letter of Credit shall be in effect with respect to such Series 2005A Bonds in a stated amount equal to the aggregate principal amount of Series 2005A Bonds then Outstanding (including Additional Series 2005A Bonds) plus 35 days' interest thereon calculated at the Maximum Rate on the basis of actual number of days elapsed in a year of 365 or 366 days, as appropriate, and otherwise with terms substantially conforming to those of the original Letter of Credit.

Section 5.02 *Draws on Letter of Credit; Extensions*.

(a) The Trustee shall make timely draws in accordance with the Letter of Credit such that timely payment under Section 4.01 is made without resort to the sources of payment described in Subsections (d), (e) and (f) of Section 4.01. Such draws shall be in amounts equal to (i) the purchase price payable with respect to the Series 2005A Bonds (excluding Banks Bonds, which are not entitled to any benefit of the Letter of Credit), less the amounts, if any, available under Section 4.01(a) or (b), or (ii) the total principal and interest due on the Series 2005A Bonds (excluding Bank Bonds, which are not entitled to any benefit of the Letter of Credit), less the

amounts (if any) available under Section 4.01(b). If any such draws are made on a Mandatory Repurchase Date in connection with the delivery of a Substitute Letter of Credit such draws shall be made under the existing Letter of Credit and not on the Substitute Letter of Credit. The Trustee agrees to make such draws in accordance with the Letter of Credit so as to be able to obtain and to transfer to the Fiscal Agent by 1:45 p.m. to the extent funds have been received from the Bank on the payment or purchase date, as the case may be, such funds to the extent necessary to permit the Fiscal Agent to make such payment when due in accordance with this Indenture and the Series 2005A Bonds.

(b) By 4:00 p.m. on the date of issuance of Additional Series 2005A Bonds bearing interest initially at the Flexible Rate and on each date of remarketing of Bank Bonds at the Flexible Rate, the Trustee shall draw on the Letter of Credit in order to obtain an amount equal to 35 days' of interest calculated on the basis of actual number of days elapsed in a year of 365 days, on the Additional Series 2005A Bonds being issued or Bank Bonds being remarketed, as applicable, for deposit in the Series 2005A Interest Reserve Subaccount.

(c) By 4:00 p.m. on the second Business Day preceding the effective date of a change in the Series 2005A Interest Rate determination method to a Flexible Rate and by 4:00 p.m. on the last Business Day of each month while Flexible Rate Bonds are Outstanding other than Bank Bonds, the Trustee shall draw on the Letter of Credit in order to obtain an amount calculated by the Trustee to be sufficient to make the Available Moneys on deposit in the Series 2005A Interest Reserve Subaccount on such day equal the sum of (i) the amount of accrued and unpaid interest on all Outstanding Flexible Rate Bonds (other than Bank Bonds) and (ii) 35 days' interest calculated on the basis of actual number of days elapsed in a year of 365 days on all Outstanding Flexible Rate Bonds (other than Bank Bonds), calculated in each case at the Maximum Rate.

(d) In drawing on the Letter of Credit, the Trustee shall be acting on behalf of the Bondholders by facilitating payment of the Series 2005A Bonds and not on behalf of the Issuer or the Company and shall not be subject to the control of either. Proceeds of draws on the Letter of Credit, except for draws made in accordance with this Section relating to the Series 2005A Interest Reserve Subaccount, shall be segregated from, and not commingled with, other moneys held by the Trustee and shall be paid to the Fiscal Agent, who shall hold such moneys segregated from, and not commingled with, other moneys held by the Fiscal Agent. If the Trustee is also acting as Fiscal Agent, such moneys shall be held in the Bond Fund.

(e) The Trustee shall advise the Company by telecopy or telex on the date of each draw on the Letter of Credit of the amount and date of such draw and of the reason for such draw.

(f) For increases in the stated amount of the Letter of Credit in connection with the issuance of Additional Series 2005A Bonds or extensions of the term of the Letter of Credit, the Trustee shall, at the written direction of a Borrower Representative but only if required to evidence an increase in the stated amount of the Letter of Credit or an extension of the term of the Letter of Credit, accept an amendment to the Letter of Credit or surrender the Letter of Credit to the Bank in exchange for a new letter of credit of the Bank or the Letter of Credit with notations thereon, as the Bank may so elect, conforming in all material respects to the Letter of Credit except that the stated amount shall be appropriately increased and/or the expiration date shall be extended. Any such extension shall be for a period of at least one year or, if less, until the fifteenth day following the maturity date of the Series 2005A Bonds.

(g) Except as provided in Section 5.02(b) in connection with the remarketing of Bank Bonds, no draws shall be made by the Trustee under the Letter of Credit for Bank Bonds.

Section 5.03 *Substitute Letter of Credit*.

(a) Upon at least 60 days' prior written notice to the Trustee, the Fiscal Agent and the Remarketing Agent, the Company may, but only to the extent it is not in default under the Lease Agreement, and with the approval of the Remarketing Agent, provide for the delivery to the Trustee of a substitute Letter of Credit complying with the

provisions of this Indenture (the "Substitute Letter of Credit"), which shall be effective upon acceptance by the Trustee. Any Substitute Letter of Credit shall have a stated expiration date of at least one year following the effective date thereof and at least 15 days following a Series 2005A Interest Payment Date.

(b) On or before the date of delivery of any Substitute Letter of Credit to the Trustee, as a condition to the acceptance by the Trustee of such Substitute Letter of Credit, the Company shall furnish or cause to be furnished to the Trustee:

(i) an Opinion of Counsel addressed to the Trustee to the effect that (A) the Substitute Letter of Credit is the valid and binding obligation of the issuer thereof enforceable against such issuer in accordance with its terms except insofar as its enforceability may be limited by any insolvency or similar proceedings applicable to the issuer or by proceedings affecting generally the rights of the issuer's creditors or by general equitable principles; and (B) the Substitute Letter of Credit does not constitute a separate security requiring registration under any applicable federal or state securities laws. In the case of a Substitute Letter of Credit issued by a branch or agency of a foreign commercial bank, there shall also be delivered an Opinion of Counsel from a firm licensed to practice law in the jurisdiction in which the head office of such bank is located, addressed to the Trustee to the effect that the Substitute Letter of Credit is the valid and binding obligation of such bank, enforceable against such bank in accordance with its terms, subject to the limitations referred to in Section 5.03(b)(i)(A) above;

(ii) written evidence satisfactory to the Trustee that the issuer of the Substitute Letter of Credit meets the requirements for an issuer of a Letter of Credit as set forth in the definition of Letter of Credit in Article I hereof;

(iii) an Opinion of Bond Counsel addressed to the Trustee to the effect that the delivery and acceptance of such Substitute Letter of Credit are authorized under this Indenture and the Act;

(iv) written confirmation from the Remarketing Agent that it has agreed to remarket the Series 2005A Bonds on or after the date of the delivery of the Substitute Letter of Credit; and

(v) if the Bonds will be rated following the acceptance by the Trustee of such Substitute Letter of Credit, a letter from each Rating Agency setting forth such rating.

The Trustee shall accept any such Substitute Letter of Credit only in accordance with the terms, and upon satisfaction of the conditions, contained in this Section and any other applicable provisions of this Indenture. Notwithstanding anything to the contrary herein, any Substitute Letter of Credit shall become effective on a Business Day. Acceptance of the Substitute Letter of Credit shall result in the occurrence of a Mandatory Repurchase Date, and the Trustee shall not terminate or surrender the Letter of Credit until the Trustee shall have made such draws thereunder, if any, as shall be required under this Indenture to provide for payment of the purchase price of the Series 2005A Bonds, and shall have received the proceeds of such draw from the Bank.

(c) Not more than 60 days and not less than 15 days prior to the effective date of the Substitute Letter of Credit, the Fiscal Agent shall send by first class mail to the Remarketing Agent and each holder of the Series 2005A Bonds, notice of the issuance of the Substitute Letter of Credit, which notice shall include (i) the identity of the issuer thereof, (ii) the date the Substitute Letter of Credit will be effective, (iii) the rating, if any, on the Series 2005A Bonds to be in effect upon receipt of the Substitute Letter of Credit and (iv) notice pursuant to Section 3.07 that the Series 2005A Bonds are subject to mandatory repurchase pursuant to Section 3.07.

Section 5.04 *Enforcement of the Letter of Credit*. The Trustee shall hold and maintain the Letter of Credit for the benefit of the Owners of the Series 2005A Bonds until the Letter of Credit terminates or expires in accordance with its terms. When the Letter of Credit terminates or expires in accordance with its terms, the Trustee shall immediately surrender it to the Bank. The Trustee hereby agrees that, except in the case of a redemption in part pursuant to Article III hereof or any other reduction in the principal amount of Series 2005A Bonds Outstanding, it will not under any circumstances request that the Bank reduce the amount of the Letter of Credit. If at any time, all Series 2005A Bonds shall cease to be outstanding, the Trustee shall surrender the Letter

of Credit to the Bank in accordance with the terms thereof. If at any time, the Bank fails to honor a draft presented under the Letter of Credit, in conformity with the terms thereof, the Trustee shall give immediate telephonic notice thereof to the Remarketing Agent, the Fiscal Agent and the Company.

ARTICLE VI

COVENANTS

Section 6.01 *Payment of Bonds*. The Issuer shall promptly pay, or cause to be paid, the principal of (whether at maturity, by acceleration, call for redemption or otherwise) and interest on and purchase price of every Bond issued under this Indenture to the Fiscal Agent for payment to the owners of the Bonds, on the dates and in the manner provided herein according to the true intent and meaning thereof, subject to the limitations set forth in Section 2.01(a).

Section 6.02 *Further Covenants and Representations of Issuer*. The Issuer shall observe and perform all covenants, conditions and agreements required on its part in this Indenture, in each Bond executed, authenticated and delivered hereunder, in all other documents related hereto, and under any laws or regulations related to the issuance of the Bonds; provided, however, that the liability of the Issuer for a breach of any such covenant, condition or agreement shall be limited solely to the Receipts and Lease Payments. The Issuer represents that it is duly authorized under the Act to issue the Bonds authorized by this Indenture, to assign the Lease Agreement and to pledge the Receipts and Lease Payments in the manner and to the extent herein set forth; that all action required on its part with respect to the issuance of the Bonds and the execution and delivery of this Indenture has been taken; and that the Bonds when issued will be valid and enforceable in accordance with their terms except as limited by bankruptcy, creditors' rights generally and principles of equity.

Notwithstanding anything to the contrary contained herein, the Bonds, together with principal and interest thereon and purchase price with respect thereto, are special, limited obligations of the Issuer secured by the Lease Agreement and, with respect to the Series 2005A Bonds, the Letter of Credit and shall always be payable solely from the revenues and income derived from the Lease Agreement (except to the extent paid out of moneys attributable to proceeds of the Bonds or the income from the temporary investment thereof) and, with respect to the Series 2005A Bonds, from payments pursuant to the Letter of Credit and shall always be a valid claim of the owner thereof only against the revenues and income derived from the Lease Agreement (except for amounts paid under Sections 4.5, 6.2 and 7.4 thereof), which revenues and income shall be used for no other purposes than to pay the principal installments of and interest on, or purchase price of, the Bonds, except as may be expressly authorized otherwise in this Indenture and in the Lease Agreement. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THE BONDS. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THE BONDS WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE. THE BONDS WILL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWERS. No owner of the Bonds shall have the right to compel the exercise of the taxing power, if any, of the Issuer, the State or any political subdivision thereof to pay any principal installment of interest on the Bonds. The Issuer has no taxing power with respect to the Bonds.

No recourse shall be had for the payment of the principal of, purchase price, and interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in this Indenture or the Lease Agreement against any past, present or future director, member, officer, agent or employee of the Issuer, or any incorporator, director, member, officer, employee, director or trustee of any successor entity, as such, either directly or through the Issuer or any successor entity, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such

incorporator, director, member, officer, employee, director, agent or trustee as such is hereby expressly waived and released as a condition of and in consideration for the execution of this Indenture and the Lease Agreement and the issuance of the Bonds.

Section 6.03 *Further Assurances*. The Issuer shall execute and deliver such supplemental indentures and such further instruments and do such further acts, as the Trustee may reasonably require for the better assuring, assigning and confirming to the Trustee the amounts assigned under this Indenture for the payment of the Bonds.

Section 6.04 *Reserved*

ARTICLE VII

DISCHARGE OF INDENTURE

Section 7.01 *Bonds Deemed Paid; Discharge of Indenture*. All Bonds shall be deemed paid for all purposes of this Indenture when (a) payment of the greater of the principal of and the maximum amount of interest that may become due on the Bonds to the due date of such principal and interest (whether at maturity, upon redemption, acceleration or otherwise) and the payment of the purchase price (with the interest being calculated at the Maximum Rate) of any Bond that may be optionally tendered by the owner either (i) has been made in accordance with the terms of Section 3.05 or Section 3.07(c) or (ii) has been provided for by depositing with the Trustee (A) moneys sufficient to make such payment, which moneys in the case of the payments of the Series 2005A Bonds must constitute Available Moneys, and/or (B) noncallable U.S. Government Obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment without regard to the reinvestment thereof, provided that (i) in the case of the payments of the Series 2005A Bonds such U.S. Government Obligations must be purchased from Available Moneys and (ii) the Trustee shall have received written evidence from each Rating Agency that as a result of such action, the current rating on the Series 2005A Bonds will not be lowered or eliminated; and (b) all compensation and expenses of the Issuer, the Trustee and the Fiscal Agent (as well as the fees and expenses of their Counsel) pertaining to each Bond in respect of which such payment or deposit is made have been paid or provided for to their respective satisfaction. When a Bond is deemed paid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for payment from moneys or U.S. Government Obligations under subsection (a) above and except that it may be optionally tendered if and as provided in Section 3.07(b) and it may be transferred, exchanged, registered, discharged from registration or replaced as provided in Article II.

Notwithstanding the foregoing, no deposit under subsection (a) above made for the purpose of paying the redemption price of a Bond (as opposed to the final payment thereof upon maturity) will be deemed a payment of a Bond as aforesaid until (x) notice of redemption of the Bond is given in accordance with Article III or, if the Bond is not to be redeemed within the next 60 days, until the Company has given the Trustee and the Fiscal Agent, in form satisfactory to the Trustee, irrevocable instructions to notify, as soon as practicable, the holder of the Bond, in accordance with Article III, that the deposit required by subsection (a) above has been made with the Trustee and that the Bond is deemed to be paid under this Article and stating the redemption date upon which moneys are to be available for the payment of the principal of the Bond or (y) the maturity of the Bond. Additionally, and while the deposit under subsection (a) above made for the purpose of paying the final payment of a Bond upon its maturity shall be deemed a payment of such Bond as aforesaid, the Trustee shall mail notice to the Owner of such Bond, as soon as practicable stating that the deposit required by subsection (a) above has been made with the Trustee and that the Bond is deemed to be paid under this Article.

When all Outstanding Bonds are deemed paid under the foregoing provisions of this Section and other sums due hereunder, under the Lease Agreement and the Credit Agreement are paid, the Trustee shall, upon request, acknowledge the discharge of the Issuer’s obligations under this Indenture except for obligations relating to optional tender as provided in Section 3.07(b), obligations under Article II in respect of the transfer, exchange, registration, discharge from registration and replacement of Bonds and obligations under Section 9.06 hereof

with respect to the Trustee's compensation and indemnification, and the Trustee without further direction shall surrender the Letter of Credit to the Bank, in accordance with the terms of the Letter of Credit. Bonds delivered to the Fiscal Agent for payment shall be cancelled by the Fiscal Agent pursuant to Section 2.07.

The Trustee may request and shall be fully protected in relying upon a certificate of an independent certified public accountant to the effect that a deposit will be sufficient to defease the Bonds as provided in this Section 7.01.

Upon receipt of any amount pursuant to this Article VII, the Trustee shall give written notice thereof, which notice shall include, without limitation, the amount of such deposit and any instructions given to the Trustee pursuant thereto, to the Remarketing Agent by first-class mail, postage prepaid.

Section 7.02 *Application of Trust Money*. The Trustee and the Fiscal Agent shall hold in trust money or U.S. Government Obligations deposited with them pursuant to the preceding Section and shall apply the deposited money and the money from the U.S. Government Obligations in accordance with this Indenture only to the payment of principal of and interest on, or purchase price of, the Bonds.

ARTICLE VIII

DEFAULTS AND REMEDIES

Section 8.01 *Events of Default*. Each of the following events shall be an Event of Default:

(a) As to the Series 2005A Bonds, default in the due and punctual payment of any interest on any Series 2005A Bond;

(b) As to the Series 2005A Bonds, default in the due and punctual payment of the principal or purchase price of any Series 2005A Bond (whether at maturity, by acceleration or redemption, upon purchase or otherwise);

(c) As to the Series 2005A Bonds, receipt by the Trustee of written notice from the Bank Administrative Agent that an Event of Default has occurred under the Credit Agreement, accompanied by a demand by the Bank that the Trustee declare the Series 2005A Bonds to be immediately due and payable;

(d) As to the Series 2005B Bonds, default in the due and punctual payment of any interest on any Series 2005B Bond; provided, however, that for so long as any Series 2005A Bonds are Outstanding, a default shall only be deemed to occur under this paragraph (d) if a default under the Series 2005A Bonds pursuant to paragraphs (a), (b) or (c) above shall also have occurred and be continuing; and

(e) As to the Series 2005B Bonds, default in the due and punctual payment of the principal of any Series 2005B Bond (whether at maturity, by acceleration or redemption, or otherwise), provided, however, that for so long as any Series 2005A Bonds are Outstanding, a default shall only be deemed to occur under this paragraph (e) if a default under the Series 2005A Bonds pursuant to paragraphs (a), (b) or (c) above shall also have occurred and be continuing.

For purposes of this Section 8.01, the Trustee shall not be deemed to have knowledge of an Event of Default hereunder unless an officer of the Trustee with responsibility for administering the Bonds has actual knowledge thereof or unless written notice of any event which is an Event of Default is received by the Trustee and such notice references the Bonds or this Indenture.

Section 8.02 *Acceleration and Duty to Draw on Letter of Credit*.

(a) Upon the occurrence of an Event of Default under Section 8.01(a), (b) or (c) above, the Trustee shall, by notice to the Issuer, the Holders of the Series 2005A Bonds, the Bank, the Remarketing Agent and the Company,

declare the entire unpaid principal of and interest on the Series 2005A Bonds immediately due and payable and, thereupon, the entire unpaid principal of and interest on the Series 2005A Bonds shall forthwith become immediately due and payable. Upon any such declaration, the Issuer shall forthwith pay to the holders of the Series 2005A Bonds the entire unpaid principal of and accrued interest on the Series 2005A Bonds, but only from the Receipts and Lease Payments herein specifically pledged for such purpose. Upon the occurrence of an Event of Default specified in Section 8.01(a), (b) or (c) above, and a declaration of acceleration hereunder, the Trustee as assignee of the Issuer shall immediately exercise its right under the Lease Agreement to declare all Lease Payments to be immediately due and payable. In the event the Trustee fails to accelerate as required by this Section 8.02(a), the owners of a majority in aggregate principal amount of Series 2005A Bonds Outstanding shall have the right to take such actions.

(b) Upon the acceleration of the maturity of the Series 2005A Bonds, by declaration or otherwise, the Trustee shall immediately draw upon the Letter of Credit for the aggregate unpaid principal amount of the Series 2005A Bonds and all interest accrued thereon which shall be applied immediately as set forth in Section 8.03. Upon such acceleration, interest on the Series 2005A Bonds shall cease to accrue as of the date of declaration of such acceleration.

(c) Upon the occurrence of an Event of Default under Section 8.01(d) or (e) above, and subject and subordinate to any rights afforded to the Series 2005A Bondholders pursuant to paragraphs (a) and (b) above and the Bank as subrogee of the Series 2005A Bondholders hereunder, the Trustee shall, by notice to the Issuer, the Holders of the Series 2005B Bonds and the Company, declare the entire unpaid principal of and interest on the Series 2005B Bonds immediately due and payable and, thereupon, the entire unpaid principal of and interest on the Series 2005B Bonds shall forthwith become immediately due and payable. Upon any such declaration, the Issuer shall forthwith pay to the holders of the Series 2005B Bonds the entire unpaid principal of and accrued interest on the Series 2005B Bonds from any Receipts and Lease Payments herein specifically pledged for such purpose after any payments required to be made to the Series 2005A Bondholders, if any, pursuant to paragraphs (a) and (b) above and after payment of all amounts due the Bank under the Credit Agreement or as subrogee of the Series 2005A Bondholders hereunder. Upon the occurrence of an Event of Default specified in Section 8.01(d) or (e) above, and a declaration of acceleration hereunder, the Trustee as assignee of the Issuer shall immediately exercise its right under the Lease Agreement to declare all Lease Payments to be immediately due and payable, subject and subordinate to any rights afforded to the Series 2005A Bondholders pursuant to paragraphs (a) and (b) above and all rights of the Bank under the Credit Agreement and as a subrogee of the Series 2005A Bondholders. In the event the Trustee fails to accelerate as required by this Section 8.02(c), the owners of a majority in aggregate principal amount of Series 2005B Bonds Outstanding shall have the right to take such actions.

Section 8.03 *Disposition of Amounts Drawn on Letter of Credit; Assignment of Rights to Contest*.

(a) All amounts drawn on the Letter of Credit by the Trustee in accordance with Section 8.02(b) shall be held in the Bond Fund (and invested in accordance with Section 4.11), shall be applied immediately to the payment of principal of and interest accrued on the Series 2005A Bonds unless, prior to or with the proceeds of the draw on the Letter of Credit, the Trustee receives written instructions from the Bank to use such proceeds to purchase all Series 2005A Bonds. If such instructions are received by the Trustee, such draw proceeds shall be immediately applied to the purchase of the Series 2005A Bonds, the acceleration of the Series 2005A Bonds shall be cancelled, the Series 2005A Bonds shall become Bank Bonds and the Series 2005A Bonds shall be registered in the name of the Company and pledged under the Credit Agreement as additional security for repayment of the Company's obligations under the Credit Agreement. Thereafter, such Series 2005A Bonds shall not be remarketed by the Remarketing Agent unless the Trustee has received written notice from the Bank that the Letter of Credit is reinstated or a Substitute Letter of Credit is delivered pursuant to Section 5.03.

(b) The Trustee hereby assigns to the Bank all its rights to contest or otherwise dispute in the Trustee's name, place and stead and at the Bank's sole election and cost any claim of preferential transfer made by a bankruptcy trustee, debtor-in-possession or other similar official with respect to any amount paid to the Trustee

by or on behalf of the Company or the Issuer to be applied to principal of or interest on or purchase price of the Series 2005A Bonds, to the extent of payments made to the Trustee pursuant to a draw under the Letter of Credit. The Trustee shall cooperate with and assist the Bank in any such contest or dispute as the Bank may reasonably request; provided, however, that the Bank shall reimburse the Trustee for its reasonable costs incurred (including reasonable attorneys' fees and expenses actually incurred) in connection with providing such cooperation and assistance. The Trustee shall give the Bank prompt notice of any claim of preferential transfer of which the Trustee has knowledge. The foregoing assignment shall not be deemed to confer upon the Bank any right to contest or otherwise dispute any claim of preferential transfer with respect to any amount as to which there has been no draw under the Letter of Credit. The assignment set forth above shall in no event be effective until the Bank shall have first furnished to the Trustee an agreement to indemnify the Trustee reasonably satisfactory to the Trustee and the holders of the Series 2005A Bonds against any claim, liability or damage which they might suffer by reason of any such contest or dispute.

Section 8.04 *Other Remedies; Rights of Bondholders*. Upon the occurrence of an Event of Default, the Trustee, subject to the terms of this Indenture, may proceed to protect and enforce its rights and the rights of the Bondholders by mandamus or other suit, action or proceeding, at law or in equity, including but not limited to an action for specific performance of any agreement herein contained or making a demand for payment from the Company and taking action pursuant to any other document to which the Trustee is a party; provided, however, that in protecting and enforcing the rights of the Bondholders hereunder, the rights of the Series 2005B Bondholders shall, in all cases, be subject and subordinate to the rights of the Series 2005A Bondholders and the Bank hereunder and under the Credit Agreement.

Upon the occurrence of an Event of Default and subject to Section 8.13, if requested to do so by the holders of a majority in aggregate principal amount of Series 2005A Bonds Outstanding, or if no Series 2005A Bonds are Outstanding, the holders of a majority in aggregate principal amount of Series 2005B Bonds Outstanding and if indemnified as provided in Section 9.01(d), the Trustee, subject to the terms of this Indenture, shall exercise such one or more of the rights and powers conferred by this Article as the Trustee, upon being advised by counsel, shall deem most expedient in the interests of the Bondholders.

No remedy conferred by this Indenture upon or reserved to the Trustee or to the Bondholders is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity. No delay or failure to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed necessary. No waiver of any default or Event of Default hereunder, whether by the Trustee pursuant to Section 8.10 or by the Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 8.05 *Right of Bondholders to Direct Proceedings*. Notwithstanding anything in this Indenture to the contrary, but subject to Section 8.13, the holders of a majority in aggregate principal amount of Series 2005A Bonds Outstanding, or if no Series 2005A Bonds are Outstanding, the holders of a majority in aggregate principal amount of Series 2005B Bonds Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or for the appointment of a receiver or any other proceedings hereunder; provided, however, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 8.06 *Application of Moneys*. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee and the fees and expenses, if any, of the Issuer in carrying out this Indenture or the Lease Agreement, be

deposited in the Bond Fund and the creation of a reasonable reserve for anticipated fees, costs and expenses; provided, however, that no proceeds from any draw on the Letter of Credit shall be used for any purpose other than payment of the principal of and interest on the Series 2005A Bonds or the purchase price thereof. All moneys in the Bond Fund shall be applied as follows:

(a) Unless the principal of all Bonds shall have become or shall have been declared due and payable:

First, to the payment to the persons entitled thereto of all installments of interest then due on the Series 2005A Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as provided in Section 8.14, and as to any difference in the respective rates of interest specified in the Series 2005A Bonds;

Second, to the payment to the persons entitled thereto of the unpaid principal of any of the Series 2005A Bonds which shall have become due (other than Series 2005A Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Series 2005A Bonds at the respective rates specified therein from the respective dates upon which they become due and, if the amount available shall not be sufficient to pay in full Series 2005A Bonds due on any particular date, together with such interest, then first to the payment of such interest ratably, according to the amount of such interest due on such date, and then to the amount of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto, without any discrimination or preference, except as provided in Section 8.14, and as to any difference in the respective rates of interest specified in the Series 2005A Bonds;

Third, to the extent permitted by law, to the payment to the persons entitled thereto of the unpaid interest on overdue installments of interest ratably, according to the amounts of such interest due on such date, without any discrimination or preference, except as provided in Section 8.14, and as to any difference in the respective rates of interest specified in the Series 2005A Bonds;

Fourth, to the Bank to reimburse the Bank in full for any amounts referred to in the preceding three paragraphs provided by the Bank with a draw under the Letter of Credit.

Fifth, to the payment to the persons entitled thereto of all installments of interest then due on the Series 2005B Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Series 2005B Bonds;

Sixth, to the payment to the persons entitled thereto of the unpaid principal of any of the Series 2005B Bonds which shall have become due (other than Series 2005B Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Series 2005B Bonds at the respective rates specified therein from the respective dates upon which they become due and, if the amount available shall not be sufficient to pay in full Series 2005B Bonds due on any particular date, together with such interest, then first to the payment of such interest ratably, according to the amount of such interest due on such date, and then to the amount of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto, without any discrimination or preference, except as to any difference in the respective rates of interest specified in the Series 2005B Bonds; and

Seventh, to the extent permitted by law, to the payment to the persons entitled thereto of the unpaid interest on overdue installments of interest ratably, according to the amounts of such interest due on such date, without any discrimination or preference, except as to any difference in the respective rates of interest specified in the Series 2005B Bonds.

(b) If the principal of all Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, including

to the extent permitted by law, interest on overdue installments of interest, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably according to the amounts due respectively for principal and interest, to the persons entitled thereto, without any discrimination or privilege, except as provided in Section 8.14 and except that all amounts due Series 2005A Bondholders and all amounts due the Bank hereunder and under the Credit Agreement shall be paid in full before any payment is made on any Series 2005B Bond.

(c) If the principal of all Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of Section 8.06(b) in the event that the principal of all Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of Section 8.06(a),

(d) All amounts received from a draw upon the Letter of Credit shall be applied exclusively to the payment of the principal of and interest on the Series 2005A Bonds or the purchase price thereof.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Series 2005A Interest Payment Date unless it shall deem another date more suitable or as required by Section 8.03(a)) upon which such application is to be made. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the holder of any Bond until such Bond is presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all principal of and interest on all Bonds have been paid under the provisions of this Section and all expenses and charges of the Trustee, the Fiscal Agent and the Issuer have been paid, and all obligations of the Company to the Bank pursuant to the Credit Agreement shall have been paid in full, the balance remaining in the Bond Fund shall immediately be paid to the Company as provided in Section 4.10.

Section 8.07 *Remedies Vested in Trustee*. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee may be brought in its name, as Trustee, without the necessity of joining as plaintiffs or defendants any holders of the Bonds, and any recovery of judgment shall be for the equal benefit of the holders of the Outstanding Bonds.

Section 8.08 *Limitations on Suits*. Except to enforce the rights given under Sections 8.02(a), 8.02(c), 8.05 and 8.12, no holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust thereof or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified or is deemed to have notice as provided in Section 9.05, (b) such default shall have become an Event of Default and the holders of at least 25% in aggregate principal amount of Series 2005A Bonds Outstanding, or if no Series 2005A Bonds are Outstanding, the holders of at least 25% in aggregate principal amount of Series 2005B Bonds Outstanding, shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, (c) such holders have offered to the Trustee indemnity as provided in Section 9.01(d), (d) the Trustee for 60 days after such notice shall fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name or in the name of such holders, (e) no direction inconsistent with such request has been given to the Trustee during such 60 day period by the holders of a majority in aggregate principal amount of the corresponding Bonds Outstanding, and (f) notice of such action, suit or proceeding is given to the Trustee; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect,

disturb or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted and maintained in the manner herein provided and for the equal benefit of the holders of each respective series Bonds Outstanding.

The notification, request and offer of indemnity set forth in the preceding paragraph, at the option of the Trustee, shall be conditions precedent to the execution of the powers and trusts in this Indenture and to any action or cause of action for the enforcement of this Indenture or for any other remedy hereunder.

Section 8.09 *Termination of Proceedings*. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Company, the Bondholders, the Bank and the Trustee shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 8.10 *Waivers of Events of Default*. The Trustee, with the written consent of the Bank, may waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds, and shall do so, with the written consent of the Bank, upon the written request of the holders of (a) a majority in aggregate principal amount of the series of Bonds Outstanding in respect of which default in the payment of principal and/or interest exists, or (b) a majority in aggregate principal amount of Series 2005A Bonds Outstanding, or if no Series 2005A Bonds are Outstanding, a majority in aggregate principal amount of Series 2005B Bonds Outstanding, in the case of any other default, provided, however, that:

(i) there shall not be waived without the consent of the holders of all Bonds of a series then Outstanding: (A) any default in the payment of the principal on any Outstanding Bonds of such series when due (whether at maturity or by mandatory or optional redemption); or (B) any default in the payment when due of the interest on any Bonds of such series unless, prior to such waiver or rescission (1) there shall have been paid or provided for all arrears of interest at the rate borne by the Bonds of such series on overdue installments of principal, all arrears of payments of principal, when due and all expenses of the Trustee in connection with such default, and (2) in case of any such waiver or rescission, or in case of the discontinuance, abandonment or adverse determination of any proceeding taken by the Trustee on account of any such default, the Trustee and the holders of Bonds of such series shall be restored to their respective former positions and rights hereunder; and

(ii) unless the Trustee has been notified by the Bank in writing that the Letter of Credit is reinstated in full as to principal and interest and that the Bank has rescinded or withdrawn the written notice referred to in Section 8.01(c), there shall be no waiver or rescission.

No such waiver or rescission shall extend to any subsequent or other default or impair any right consequent thereon.

Section 8.11 *Opportunity to Cure Defaults*. With regard to any alleged default concerning which notice is given to the Company or the Bank, the Company or the Bank may, but is under no obligation to, perform any covenant, condition or agreement the nonperformance of which is alleged in such notice to constitute a default, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts with power of substitution.

Section 8.12 *Unconditional Right to Receive Principal and Interest*. Nothing in this Indenture shall affect or impair the right of any Series 2005A Bondholder to enforce, by action at law, payment of the principal or purchase price of and interest on any Series 2005A Bond at and after the maturity thereof, or on the date fixed for redemption or purchase or (subject to the provisions of Section 8.02) on the same being declared due prior to maturity as herein provided, or the obligation of the Issuer to pay the principal or purchase price of and interest on each of the Bonds issued hereunder to the respective holders thereof at the time, place, from the source, in the order of priority, and in the manner herein and in the Bonds expressed.

Section 8.13 *Letter of Credit Bank Deemed Owner*. For all purposes of this Article VIII (other than receipt of payments), the Bank shall, so long as the Bank shall not have dishonored any draw under the Letter of Credit strictly complying with the terms thereof (other than for a reason permitted by the Letter of Credit or pursuant to any administrative or judicial order, ruling, finding or decision), be deemed the holder and registered owner of all Series 2005A Bonds. As such, the Bank may take all actions permitted by this Article VIII to be taken by the holders or registered owners of the Series 2005A Bonds, to the exclusion of the actual holders and registered owners of the Series 2005A Bonds; the purpose of this Section 8.13 being to permit the Bank to direct the taking of actions and enforcement of remedies permitted by this Article VIII so long as the Bank shall not have dishonored any draw under the Letter of Credit complying with the terms thereof (other than for a reason permitted by the Letter of Credit or pursuant to any administrative or judicial order, ruling, rule, finding or decision).

Section 8.14 *Subrogation Rights of the Bank*.

(a) Notwithstanding anything else contained herein, whenever the Trustee shall make any payment to any Series 2005A Bondholder with funds drawn under Letter of Credit pursuant hereto, the Trustee shall make such payments, and the Bank and its assigns shall thereafter, to the extent of the amount so paid and not subsequently reimbursed pursuant to the Credit Agreement, be subrogated to the rights thereon of the Series 2005A Bondholders to whom such payment was made, and the Trustee shall, in the event of the payment of principal, keep a written record of such payments. When a Series 2005A Bondholder has been paid the entire principal of and interest on his Series 2005A Bond with funds drawn under the Letter of Credit, such Series 2005A Bond shall be surrendered to the Trustee as agent for the Bank, in lieu of cancellation thereof, and such Series 2005A Bond shall be transferred and delivered to the Bank or as the Bank shall direct.

(b) In the event the Bank makes any payment with respect to the payment of the principal or purchase price of or interest on any Series 2005A Bond to the Trustee under the Letter of Credit and such payment is not subsequently reimbursed to the Bank, the Bank shall be subrogated to the rights possessed under this Indenture and in and to the Trust Estate by the Trustee, the Issuer and the owners of such Series 2005A Bonds so paid, and the Bank shall be subrogated to the rights of the Issuer and the Trustee under any other document, instrument or agreement securing repayment of the principal or purchase price of and interest on the Series 2005A Bonds. For purposes of the Bank's subrogation rights hereunder, (i) any reference in this Indenture to the Bondholders shall include the Bank, which shall be entitled to be treated as if the Bank were a registered owner of Series 2005A Bonds in the principal amount of any principal payment made by the Bank under the Letter of Credit, (ii) any portion of any Series 2005A Bond as to which the principal or purchase price is paid with money collected pursuant to the Letter of Credit shall be deemed to be outstanding under this Indenture and the principal amount of such Series 2005A Bond, together with interest due and unpaid thereon, which shall have been paid by the Bank pursuant to the Letter of Credit shall be deemed to be held by and owing to the Bank, and (iii) the Bank may exercise any and all rights and benefits it would have under this Indenture as a Holder of Series 2005A Bonds to the extent of the principal amount of Series 2005A Bonds owned or deemed to be owned by the Bank and any and all interest so due and unpaid thereon; provided that such Bank Bonds (A) shall not be taken into account in determining any deficiency for which a claim or draw is to be made under the Letter of Credit, and (B) as to any other Series 2005A Bonds shall be subordinated in right of payment as of any Series 2005A Interest Payment Date or upon the redemption or acceleration of the Series 2005A Bonds. Subrogation rights granted to the Bank hereunder are not intended to be exclusive of any other rights or remedies available to the Bank, and such subrogation rights shall be cumulative and shall be in addition to every right or remedy given hereunder or under any other instrument or agreement with respect to reimbursement of money paid by the Bank pursuant to the Letter of Credit, and every other right or remedy now or hereafter existing at law or in equity or by statute.

Section 8.15 *Bonds Outstanding*. Notwithstanding anything else in this Article to the contrary, but subject to Section 8.13, Bonds (other than Bank Bonds) owned by the Company shall not be deemed to be Outstanding for purposes of this Article and the Company as holder thereof shall not be entitled to any rights or payments therefor pursuant to Sections 8.05, 8.06, 8.08 or 8.10.

ARTICLE IX

TRUSTEE, FISCAL AGENT, REMARKETING AGENT AND INDEXING AGENT

Section 9.01 *Duties of Trustee*.

(a) The Trustee, prior to the occurrence of an Event of Default hereunder or a Lease Default under the Lease Agreement of which the Trustee is deemed to have notice pursuant to Section 8.01 or Section 7.1 of the Lease Agreement, as applicable, and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and the Lease Agreement, and no implied covenants or obligations shall be read into this Indenture against the Trustee. If an Event of Default hereunder or a Lease Default under the Lease Agreement of which the Trustee is deemed to have notice has occurred (which has not been cured or waived) and is continuing, the Trustee shall exercise its rights and powers and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default, in the absence of bad faith, gross negligence or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether they conform to the requirements of this Indenture.

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

(i) this subsection does not limit the effect of (b) above;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by an authorized officer of the Trustee, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 8.05.

(d) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity reasonably satisfactory to it against any loss, liability or expense, but (i) the Trustee may not require indemnity as a condition to declaring the principal of and interest on the Bonds to be due immediately under Section 8.02 and (ii) the Trustee may not require indemnity as a condition to drawing on the Letter of Credit or to taking any action under the Letter of Credit or to paying the Bonds as they become due. The Trustee shall not be required to give any bond or surety in respect of the execution of the trust created hereby or the powers granted hereunder. The permissive right of the Trustee to do things enumerated under this Indenture shall not be construed as a duty of the Trustee.

(e) The Trustee shall not be liable for interest on any cash held by it except as the Trustee may agree with the Company or with the Issuer with the consent of the Company.

(f) The Trustee may conclusively rely on a certificate of a Borrower Representative as to whether a Bankruptcy Filing has occurred.

(g) The Trustee shall comply with the terms of the Letter of Credit.

(h) The Trustee shall maintain adequate records pertaining to the Funds held by the Trustee, the investment thereof and the disbursement therefrom. Notwithstanding anything to the contrary in this Indenture or the Lease Agreement, the Trustee shall not be required to advance its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

(i) Every provision of this Indenture that in any way relates to the Trustee is subject to all the foregoing paragraphs of this Section.

(j) The Trustee shall not in any event be responsible for ensuring that the rate of interest due and payable on the Bonds under this Indenture does not exceed the highest legal rate of interest permissible under federal or state law applicable thereto.

Section 9.02 *Rights of Trustee*.

(a) Subject to the foregoing Section, the Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person, who at the time of making such request or authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of any Bond issued in replacement thereof.

(b) Before the Trustee acts or refrains from acting, it may require a certificate of an authorized officer or officers of the Issuer or the Company or an Opinion of Counsel stating that (i) the person making such certificate or opinion has read such covenant or condition, (ii) the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based, (iii) in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with, and (iv) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with. The Trustee shall not be liable for any loss or damage or action it takes or omits to take in good faith in reliance on the certificate or an Opinion of Counsel.

(c) The Trustee may execute any of the trusts or powers hereunder and perform any of its duties through agents, attorneys or employees or co-trustees and shall not be responsible for the willful misconduct or gross negligence of any agent, attorney, employee or co-trustee appointed with due care.

Section 9.03 *Individual Rights of Trustee, Etc*. The Trustee in its individual or any other capacity may become the owner, custodian or pledgee of Bonds and may otherwise deal with the Issuer, the Bank or the Company or its affiliates with the same rights it would have if it were not Trustee. The Fiscal Agent may do the same with like rights.

Section 9.04 *Trustee's Disclaimer*. Subject to Sections 9.01(b) and 9.01(c):

(a) the Trustee (i) makes no representation as to the validity or adequacy of this Indenture or the Bonds, (ii) shall not be responsible for any statement in the Bonds or for the perfection of any lien created by this Indenture or otherwise as security for the Bonds, (iii) makes no representation as to, and assumes no responsibility for the correctness of, the recitals of fact in this Indenture, (iv) shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds, except for any information provided by the Trustee, and (v) shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds;

(b) the Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Bondholders, the Issuer, the Company and the Remarketing Agent;

(c) the Trustee shall not be responsible for the application of any of the proceeds of the Bonds or any other moneys deposited with it and paid out, withdrawn or transferred hereunder if such application, payment, withdrawal or transfer shall be made in accordance with the provisions of this Indenture;

(d) the Trustee shall not be under any obligation to see to the recording or filing of this Indenture, the Lease Agreement, any financing statements or continuation statements or any other instrument or otherwise to the giving to any person of notice of the provisions hereof or thereof;

(e) the Trustee shall not be under any obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by the Company, or to report, or make or file claims or proof of loss for, any loss or damage insured against or which may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made; and

(f) the Trustee shall not be personally liable for any claims by or on behalf of any person, firm, corporation or other legal entity arising from the conduct or management of, or from any work or thing done on, the Project, and shall have no affirmative duty with respect to compliance of the Project under state or federal laws pertaining to the transport, storage, treatment or disposal of pollutants, contaminants, waste or hazardous materials, or regulations, permits or licenses issued under such laws.

Section 9.05 *Notice of Defaults*. If an event occurs which with the giving of notice or lapse of time or both would be an Event of Default and if the Trustee has notice thereof as herein provided, or if an Event of Default has occurred and is continuing, the Trustee shall mail to each Bondholder, the Remarketing Agent and the Bank notice of the Event of Default upon its having notice of such occurrence. Except in the case of a default in payment or purchase of any Series 2005A Bonds, the Trustee may withhold the notice if and so long as it determines that withholding the notice is in the interests of Bondholders; provided, that in any event such notice shall not be withheld from the Bank or the Remarketing Agent.

Section 9.06 *Compensation and Indemnification of Trustee*. For acting as trustee under this Indenture, the Trustee shall be entitled to compensation by the Company (which shall not be limited by any statute regulating the compensation of a trustee of an express trust) of reasonable fees for the Trustee's services and reimbursement of advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with its services under this Indenture.

The Trustee shall be indemnified by the Company for, and shall be held harmless against, any loss, liability or expense incurred without gross negligence, willful misconduct or bad faith on the Trustee's part, arising directly or indirectly out of or in connection with the acceptance or administration of the trust created by this Indenture, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

To secure the payment or reimbursement to the Trustee provided for in this Section 9.06, the Trustee shall have a senior claim, to which the Bonds are made subordinate, on all money or property held or collected by the Trustee, except moneys held under Article VII or otherwise held in trust to pay the principal of and interest on and purchase price of the Bonds, and except amounts drawn under the Letter of Credit, and Available Moneys on deposit in the Bond Fund.

When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

Section 9.07 *Eligibility of Trustee*. This Indenture shall always have a Trustee that meets the qualifications set forth in this Section 9.07. Each Trustee shall: (i) be a banking corporation, national banking association or trust company duly organized under the laws of the United States of America or any state or territory thereof, doing business and having an office in such location as shall be approved by the Remarketing Agent, (ii) have together with its affiliates (herein defined) a combined capital and surplus of at least $100,000,000 as set forth in its most recently filed annual report of condition, (iii) either have senior long-term debt securities or outstanding bank deposit obligations, as appropriate, rated "Baa3/P-3" or better by Moody's, "BBB-/A3" or better by Standard & Poor's or "BBB-/F3" or better by Fitch, or be a direct or indirect subsidiary of a bank or bank

holding company which has senior long-term debt securities or outstanding bank deposit obligations, as appropriate, rated "Baa3/P-3" or better by Moody's, "BBB-/A3" or better by Standard & Poor's or "BBB-/F3" or better by Fitch or otherwise be acceptable to any Rating Agency then rating the Bonds, and (iv) be authorized by law to perform all the duties imposed upon it by this Indenture. For purposes of this Section, the term "affiliate" of the Trustee shall mean any corporation or other person which, directly or indirectly, controls or is controlled by or is under common control with the Trustee.

Section 9.08 *Replacement of Trustee*. The Trustee may resign and be discharged of the trust created by this Indenture by notifying the Issuer, the Bank, the Fiscal Agent, the Remarketing Agent and the Company; provided, however, that no such resignation shall become effective until the appointment of a successor Trustee, as hereinafter provided. The holders of not less than a majority in principal amount of the Bonds Outstanding may remove the Trustee by notifying the removed Trustee and may appoint a successor Trustee with the Issuer's, the Bank's and the Company's prior written consent; provided, however, that no such removal shall become effective until the appointment of a successor Trustee, as hereinafter provided. The Issuer shall remove the Trustee at the request of the Bank or if the Trustee is prohibited from acting by law or by regulation, rule or order of any court or administrative body having jurisdiction over the Trustee; provided, however, that no such removal shall become effective until the appointment of a successor Trustee, as hereinafter provided. The Issuer may remove the Trustee at its discretion with the prior written consent of the Company and the Bank; provided, however, that no such removal shall become effective until the appointment of a successor trustee as hereinafter provided. Upon the removal or replacement of the Trustee for any reason, the Issuer and the Company shall give written notice thereof to the Remarketing Agent, the Fiscal Agent and the Bank by first-class mail, postage prepaid.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuer, with the prior written consent of the Bank and, so long as no Event of Default shall have occurred and be continuing, the Company shall promptly appoint a successor Trustee. Notice of such appointment shall be given by the Issuer to the Remarketing Agent and the Fiscal Agent in writing by first-class mail.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer, the Bank, the Company, the Fiscal Agent and the Remarketing Agent. Immediately thereafter, the retiring Trustee shall transfer all property held by it as Trustee hereunder to the successor Trustee, the resignation or removal of the retiring Trustee shall then (but only then) become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall notify the holders of the Bonds of its acceptance of the trusts hereunder by first-class mail promptly following such acceptance.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer, the Bank, the Company or the holders of a majority in principal amount of the Bonds Outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 9.07, any Bondholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Section 9.09 *Fiscal Agent*. The Issuer shall, with the prior approval of the Company, the Bank and the Remarketing Agent, appoint the Fiscal Agent for the Bonds subject to the conditions set forth in Section 9.10. The Bank of New York Trust Company, N.A. shall be the initial Fiscal Agent. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Bank and the Trustee under which such Fiscal Agent will agree, particularly:

(a) to carry out all of its duties set forth herein;

(b) if the Trustee and the Fiscal Agent are not the same entities, to hold all sums held by it pursuant to this Indenture in a segregated account for the payment of the principal of or interest on Bonds in trust for the benefit of the Bondholders until such sums shall be paid to such Bondholders or otherwise disposed of as herein provided;

(c) to hold all Bonds delivered to it pursuant to this Indenture, as agent and bailee of, and in escrow for the benefit of, the respective holders which shall have so delivered such Bonds until moneys representing the purchase price of such Bonds shall have been delivered to or for the account of or to the order of such holders; and

(d) to keep such books and records as shall be consistent with prudent industry practice, to make such books and records available for inspection by the Issuer, the Trustee, the Remarketing Agent, the Bank and the Company at all reasonable times.

The Issuer shall cooperate with the Trustee and the Company to cause the necessary arrangements to be made and to be thereafter continued whereby funds derived from the sources specified in Sections 4.01 and 5.02 will be made available for the payment when due of the Bonds as presented to the Fiscal Agent.

Section 9.10 *Qualifications of Fiscal Agent; Resignation; Removal*. The Fiscal Agent shall meet the qualifications of the Trustee set forth in Section 9.07. For acting under this Indenture, the Fiscal Agent shall be entitled to compensation by the Company of reasonable fees for the Fiscal Agent's services and reimbursement of advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Fiscal Agent in connection with its services under this Indenture.

The Fiscal Agent shall be indemnified by the Company for, and shall be held harmless against, any loss, liability or expense directly or indirectly incurred without gross negligence, willful misconduct or bad faith on the Fiscal Agent's part, arising directly or indirectly out of or in connection with its duties under this Indenture, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The Fiscal Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' prior written notice to the Issuer, the Bank, the Company, the Remarketing Agent and the Trustee. The Fiscal Agent may be removed by the Issuer at the written direction of the Bank, and, so long as no Event of Default has occurred and is continuing, the Company, by an instrument, signed by the Issuer, filed with the Fiscal Agent, the Bank, the Company, the Remarketing Agent and the Trustee. If an Event of Default has occurred and is continuing, the Bank may direct the Issuer to remove the Fiscal Agent without the concurrence of the Company. Except as provided below, no resignation or removal will be effective until the successor has delivered an acceptance of its appointment to the Trustee.

In the event of the resignation or removal of the Fiscal Agent, the Fiscal Agent shall pay over, assign and deliver any property held by it in such capacity hereunder to its successor or, if there be no successor, to the Trustee.

In the event that the Issuer shall fail to appoint a Fiscal Agent hereunder, or in the event that the Fiscal Agent shall resign or be removed, or be dissolved, or if the property or affairs of the Fiscal Agent shall be taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the Issuer shall not have appointed its successor as Fiscal Agent, the Trustee shall *ipso facto* be deemed to be the Fiscal Agent for all purposes of this Indenture until the appointment by the Issuer of a successor Fiscal Agent.

Section 9.11 *Duties of Remarketing Agent*.

(a) The Remarketing Agent shall, in accordance with the Remarketing Agreement and as provided in this Indenture, (i) establish the Series 2005A Interest Rates on the Bonds as designee for the Issuer and (ii) remarket the Series 2005A Bonds as designee for the Company. The Remarketing Agent may for its own account or as broker or agent for others deal in Series 2005A Bonds and may do anything any other Bondholder may do to the same extent as if the Remarketing Agent were not serving as such. The Remarketing Agent shall have no duty to act hereunder to the extent the Remarketing Agent is not required to perform its obligations under the Remarketing Agreement.

(b) The Remarketing Agent may execute and perform any of its duties hereunder through agents, attorneys or co-remarketing agents and shall not be responsible for the willful misconduct or gross negligence of any agent, attorney or co-remarketing agent appointed with due care.

Section 9.12 *Eligibility of Remarketing Agent; Replacement*. The Remarketing Agent shall be a member of the National Association of Securities Dealers, Inc. having excess net capital (as defined in Rule 15c3-1 of the Securities Exchange Act of 1934, as amended) of at least $25,000,000 or, in the alternative, a national banking association having a combined capital stock, surplus and undivided profits of at least $100,000,000, and, if the Series 2005A Bonds are rated by a Rating Agency, the Remarketing Agent must be rated at least "Baa3/P-3" by Moody's, "BBB-/A3" by Standard & Poor's, "BBB-/F3" by Fitch, or otherwise be acceptable to the Rating Agency.

Banc of America Securities LLC is hereby appointed as the initial Remarketing Agent and is herein referred to as the "Remarketing Agent." Any Remarketing Agent shall accept its appointment hereunder in writing. The Remarketing Agent may resign by notifying the Issuer, the Company, the Trustee, the Fiscal Agent and the Bank at least 45 days before the effective date of the resignation. The Company may, but only with the prior written consent of the Bank, at any time remove the Remarketing Agent by notifying the Remarketing Agent, the Fiscal Agent, the Bank, the Issuer and the Trustee at least 60 days prior to the effective date of such removal. Notwithstanding anything herein to the contrary and subject to satisfying the requirements of Section 5.03 with respect to the Substitute Letter of Credit, the Company may simultaneously remove the Remarketing Agent and the Bank by notifying the Remarketing Agent, the Bank, the Issuer, the Fiscal Agent, and the Trustee. Upon the receipt or giving, as the case may be, of notice of the resignation or the removal of the Remarketing Agent, the Issuer, at the direction of the Company, but only with the prior written consent of the Bank, shall proceed to appoint a successor by notifying the Remarketing Agent, the Bank, the Fiscal Agent and the Trustee. When the Bonds bear interest at a Weekly Rate, if the Remarketing Agent resigns or is removed pursuant to the terms of this Indenture and, after 45 days in the case of giving notice of resignation or 60 days in the case of receiving notice of removal, the Issuer has failed to appoint a successor Remarketing Agent in accordance with the terms of this Section 9.12, the Company shall immediately give notice thereof to the Trustee and shall direct the Trustee to give notice to the holders of all Series 2005A Bonds which bear interest at the Weekly Rate of a mandatory repurchase of such Bonds pursuant to Section 3.07(a)(iv) hereof. Such mandatory repurchase shall take place on the first Series 2005A Interest Payment Date to occur following such Notice of Mandatory Repurchase by the Trustee (or if such date is not a Business Day, on the next succeeding Business Day), unless such Mandatory Repurchase Date is a date less than 15 days after such Notice of Mandatory Repurchase is given, in which case such mandatory repurchase shall occur on the next succeeding Series 2005A Interest Payment Date (or, if such date is not a Business Day, on the next succeeding Business Day). Notwithstanding the foregoing, no such resignation or removal shall be effective until either (i) the successor Remarketing Agent has delivered an acceptance of its appointment to the Trustee or (ii) the Mandatory Repurchase Date described above; provided that, in the event that such resignation or removal occurs upon a Mandatory Repurchase Date, the Series 2005A Bonds shall not be remarketed until such time as a successor Remarketing Agent has delivered an acceptance of its appointment to the Trustee.

Notwithstanding the foregoing, with prior written notice to (but without the consent of) the Issuer, the Company, the Trustee, the Fiscal Agent, the Bank and the Bondholders, the Remarketing Agent may assign or transfer any or all of its rights and obligations hereunder and under the Remarketing Agreement to any wholly-owned subsidiary or affiliate of the Remarketing Agent so long as such subsidiary or affiliate meets the qualifications for a Remarketing Agent set forth herein and is otherwise permitted to perform such obligations under all applicable federal and state banking and securities laws, rules and regulations.

Section 9.13 [Reserved]

Section 9.14 *Successor Trustee, Remarketing Agent or Fiscal Agent by Merger*. If the Trustee, the Remarketing Agent or the Fiscal Agent consolidates with, merges or converts into, or transfers all or substantially all its assets (or, in the case of a bank or trust company, its corporate trust assets) to, another corporation or national banking association, the resulting, surviving or transferee corporation or national banking association without any

further act shall be the successor Trustee, Remarketing Agent or Fiscal Agent, provided that such corporation or national banking association shall otherwise be eligible to serve in such capacity under this Indenture.

Section 9.15 *Appointment of Co-Trustee*. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease Agreement, and in particular in case of the enforcement thereof upon a default or an Event of Default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section are adapted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them; provided, however, that no co-trustee shall be liable by reason of any act or omission of any other such co-trustee.

Should any instrument in writing from the Issuer be required by the separate or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. In case any separate or co-trustee or a successor to either shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new co-trustee or successor to such separate or co-trustee.

ARTICLE X

AMENDMENTS OF AND SUPPLEMENTS TO INDENTURE

Section 10.01 *Without Consent of Bondholders*. The Issuer and the Trustee may amend or supplement this Indenture or the Bonds without prior notice to or consent of any Bondholder:

(a) to cure any ambiguity, inconsistency or formal defect or omission;

(b) to grant to the Trustee for the benefit of the Bondholders additional rights, remedies, powers or authority;

(c) to subject to this Indenture additional collateral or to add other agreements of the Issuer;

(d) to modify, amend or supplement this Indenture or any indenture supplemental hereto or the Bonds to permit qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute at the time in effect; to permit the qualification of the Bonds for sale under the securities laws of any state of the United States; or to prevent the application of the Investment Company Act of 1940, as amended, to any of the transactions contemplated by, or any of the parties to this Indenture, the Lease Agreement or the Bonds;

(e) to provide for uncertificated Bonds or to make any change necessary to give effect to a custody agreement pursuant to Section 2.05(d);

(f) to evidence the succession of a new Trustee or the appointment by the Trustee of a co-trustee;

(g) [reserved]

(h) to make any change not materially adversely affecting any Bondholder's rights requested by the Rating Agency in order (i) to obtain a rating from the Rating Agency after the initial issuance of the Bonds if the Bonds are initially issued without a rating equivalent to the rating assigned to other securities supported by a Letter of Credit of the Bank, or (ii) to maintain any rating on the Bonds;

(i) to make any change not materially adversely affecting any Bondholder's rights to provide for or to implement the provisions of a Letter of Credit;

(j) to make any other change to provide for or to implement the provisions of a Letter of Credit only if such Letter of Credit and the changes to this Indenture become effective on a Mandatory Repurchase Date;

(k) to provide for (or subsequently modify) an Alternate Rate pursuant to Section 2.02(e) or to make any changes to the Base Rate requested by the Remarketing Agent;

(l) to delete the requirement of an Series 2005A Interest Reserve Subaccount while Series 2005A Bonds bear interest at a Flexible Rate if the Trustee has received written confirmation from the Rating Agency then rating the Series 2005A Bonds that such amendment will not result in a reduction or a withdrawal of the rating then in effect for the Series 2005A Bonds;

(m) to make any change to be effective on any Mandatory Repurchase Date provided that such change has been disclosed to all owners of Series 2005A Bonds who purchase on such date;

(n) to make any change that does not materially adversely affect the rights of any Bondholder;

(o) to add to this Indenture the obligation of the Trustee, the Issuer or the Company to disclose such information regarding the Bonds, the Project, the Issuer, the Trustee, the Company or the Bank as shall be required or recommended to be disclosed in accordance with applicable regulations or guidelines established by, among others, the American Bankers Association Corporate Trust Committee or the Securities and Exchange Commission; or

(p) to provide for such changes as may be necessary in connection with the issuance of Additional Bonds or Series 2005A Conversion Bonds as shall not, in the opinion of the Trustee, prejudice in any material respect the rights of the holders of the Bonds then Outstanding.

Section 10.02 *With Consent of Bondholders*. If an amendment of or supplement to this Indenture or the Bonds without any consent of Bondholders is not permitted by the preceding Section, the Issuer and the Trustee may enter into such amendment or supplement without prior notice to any Bondholders but with the consent of the holders of at least a majority in principal amount of the Series 2005A Bonds Outstanding. However, without the consent of all Bondholders affected, no amendment or supplement may (a) extend the maturity of the principal of, or interest on, any Bond, (b) reduce the principal amount of, or rate of interest on, any Bond or change the terms of any redemption (except as otherwise provided in Section 3.01), (c) effect a privilege or priority of any Bond or Bonds over any other Bond or Bonds (except as provided herein), (d) reduce the percentage of the principal amount of the Bonds required for consent to such amendment or supplement, (e) eliminate the holders' rights to optionally tender the Series 2005A Bonds, (f) extend the due date for the purchase of Series 2005A Bonds optionally tendered by the holders thereof or reduce the purchase price of such Series 2005A Bonds, (g) create a lien ranking prior to or on a parity with the lien of this Indenture on the property described in the Granting Clause of this Indenture (except as provided herein with respect to the issuance of Additional Bonds), or (h) deprive any Bondholder of the lien created by this Indenture on such property (except as provided herein with respect to the issuance of Additional Bonds). In addition, if moneys or U.S. Government Obligations have been deposited or set aside with the Trustee pursuant to Article VII for the

payment of Bonds and those Bonds shall not have in fact been actually paid in full, no amendment to the provisions of that Article shall be made without the consent of the holder of each of those Bonds affected.

Section 10.03 *Effect of Consents*. After an amendment or supplement becomes effective, it shall bind every Bondholder unless it makes a change described in any of the lettered clauses of the preceding Section. In such case, the amendment or supplement shall bind each Bondholder who consented to it and each subsequent holder of a Bond or portion of a Bond evidencing the same debt as the consenting holder's Bond.

Section 10.04 *Notation on or Exchange of Bonds*. If an amendment or supplement changes the terms of a Bond, the Trustee may require the holder to deliver it to the Fiscal Agent. The Fiscal Agent may place an appropriate notation on the Bond regarding the changed terms and return it to the holder. Alternatively, if the Issuer, the Company and the Trustee so determine, the Issuer in exchange for the Bond shall issue and the Fiscal Agent or the Trustee shall authenticate a new Bond that reflects the changed terms. In either event, the cost of placing such notation on the Bond(s) shall be borne by the Company.

Section 10.05 *Signing by Trustee of Amendments and Supplements*. The Trustee shall sign any amendment or supplement to this Indenture or the Bonds authorized by this Article if the amendment or supplement, in the judgment of the Trustee, does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing an amendment or supplement, the Trustee shall be entitled to receive and (subject to Section 9.01) shall be fully protected in relying on an Opinion of Counsel stating that such amendment or supplement is authorized by this Indenture and is duly authorized, executed and delivered and enforceable in accordance with its terms.

Section 10.06 *Company, Bank, Fiscal Agent and Remarketing Agent Consents Required*. An amendment or supplement to this Indenture or the Bonds shall not become effective unless the Company, the Remarketing Agent (but only to the extent that such amendment or supplement affects the rights, duties or obligations of the Remarketing Agent hereunder), the Fiscal Agent (but only to the extent that such amendment or supplement affects the rights, duties or obligations of the Fiscal Agent hereunder) and the Bank deliver to the Trustee their written consents to the amendment or supplement. In any event, no amendment or supplement hereto shall become effective until the Remarketing Agent and the Fiscal Agent acknowledge receipt of a copy of such supplement or amendment.

Section 10.07 *Notice to Bondholders*. The Trustee shall cause notice of the execution of a supplemental indenture to be mailed promptly by first-class mail to each Bondholder at the holder's registered address. The notice shall state briefly the nature of the supplemental indenture and that copies thereof are on file with the Trustee for inspection by all Bondholders.

Section 10.08 *Opinion of Bond Counsel Required*. An amendment or supplement to this Indenture shall not become effective unless the Trustee has received an Opinion of Bond Counsel addressed to the Issuer, the Trustee, the Fiscal Agent, the Bank, the Company and the Remarketing Agent to the effect that such amendment or supplement is authorized by this Indenture.

ARTICLE XI

AMENDMENTS OF AND SUPPLEMENTS TO OTHER DOCUMENTS

Section 11.01 *Without Consent of Bondholders*. The Issuer, with the consent of the Company, may enter into, and the Trustee may consent to, any amendment of or supplement to the Lease Agreement, without notice to or consent of any Bondholder, if the amendment or supplement is required (a) by the provisions of the Lease Agreement or this Indenture, (b) to cure any ambiguity, inconsistency or formal defect or omission, (c) to identify more precisely the Project, (d) in connection with any authorized amendment of or supplement to this Indenture, or (e) to make any change comparable to those described in Section 10.01.

Section 11.02 *With Consent of Bondholders*. If an amendment of or supplement to the Lease Agreement without any consent of Bondholders is not permitted by Section 11.01, the Issuer may enter into, and the Trustee may consent to, such amendment or supplement without prior notice to any Bondholder but with the consent of the holders of at least a majority in principal amount of the Series 2005A Bonds Outstanding. However, without the consent of each Bondholder affected, no amendment or supplement may result in a change comparable to those described in the lettered clauses of Section 10.02.

Section 11.03 *Consents by Trustee and the Fiscal Agent to Amendments or Supplements*. The Trustee shall consent to any amendment or supplement to the Lease Agreement authorized by this Article if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, consent to such an amendment or supplement. An amendment or supplement to the Lease Agreement shall not become effective unless the Fiscal Agent (but only to the extent that such amendment or supplement affects the rights, duties or obligations of the Fiscal Agent) delivers to the Trustee its written consent to the amendment or supplement. In any event, no amendment or supplement hereto shall become effective until the Fiscal Agent acknowledges receipt of a copy of such supplement or amendment. In consenting to an amendment or supplement, the Trustee shall be entitled to receive and (subject to Section 9.01) shall be fully protected in relying on an Opinion of Bond Counsel stating that such amendment or supplement is authorized by this Indenture and has been duly authorized, executed and delivered and is enforceable in accordance with its terms.

Section 11.04 *Notice to Bondholders*. The Trustee shall cause notice of the execution of an amendment or supplement to the Lease Agreement pursuant to Section 11.02 to be mailed promptly by first-class mail to each Bondholder at the holder's registered address. The notice shall state briefly the nature of the amendment or supplement and that copies thereof are on file with the Trustee for inspection by all Bondholders.

Section 11.05 *Bank and Remarketing Agent Consent Required*. An amendment or supplement to the Lease Agreement shall not become effective unless the Remarketing Agent (but only to the extent that such amendment or supplement affects the rights, duties or obligations of the Remarketing Agent hereunder or thereunder) and the Bank deliver to the Trustee their written consents to the amendment or supplement, for so long as the Series 2005A Bonds are Outstanding. In any event, no such amendment or supplement shall become effective until the Remarketing Agent acknowledges receipt of a copy of such amendment or supplement.

ARTICLE XII

MISCELLANEOUS

Section 12.01 *Notices*.

(a) Any notice, request, direction, designation, consent, acknowledgment, certification, appointment, waiver or other communication required or permitted by this Indenture or the Bonds must be in writing except as expressly provided otherwise in this Indenture or the Bonds.

(b) Except as otherwise provided herein, any notice or other communication shall be sufficiently given and deemed given when (i) delivered by hand, (ii) sent by a nationally recognized overnight courier, (iii) mailed by first-class mail, postage prepaid, or, (iv) unless specifically prohibited under the terms of the Indenture, by telecopy under the provisions of this Indenture, addressed as follows:

(1) If to the Issuer:

Bernalillo County , New Mexico
One Civic Plaza NW
Albuquerque, NM 87102
Attention: County Manager
Telecopier: (505) 768-4000

(2) If to the Trustee:

The Bank of New York Trust Company, N.A.
10161 Centurion Parkway
Jacksonville, FL 32256
Attn: Florida Muni

(3) If to the Underwriter or the Remarketing Agent:

Banc of America Securities LLC
Hearst Tower, 14th Floor
NC1 027 14 01
214 North Tryon Street
Charlotte, North Carolina 28255
Attention: Municipal Trading and Underwriting
Telecopier: (704) 388-0393

(4) If to the Bank:

Bank of America, N. A.
414 Union St
Nashville TN 37219-1697
Attention:
Telecopier: (615) 749-4762

(5) If to the Fiscal Agent:

The Bank of New York Trust Company, N.A.
10161 Centurion Parkway
Jacksonville, FL 32256
Attn: Florida Muni

(6) If to the Company:

Tempur Production USA, Inc.
1713 Jaggie Fox Way
Lexington, Kentucky 40511
Attention: Assistant Treasurer
Telecopier: (859) 514-5841

with a copy to:

Brownstein Hyatt & Farber, P.C.
201 Third Street NW, Suite 1700
Albuquerque, New Mexico 87102
Attention: David Buchholtz
Telecopier: (505) 244-0770

A copy of any notice to any party given hereunder (with the exception of notices required for draws under any Letter of Credit) shall be provided to the Remarketing Agent for so long as the Series 2005A Bonds are Outstanding and the Trustee in the manner such notice is otherwise given.

The beneficial owner of $1,000,000 or more of Series 2005A Bonds may, by written notice to the Trustee and the Fiscal Agent, request that all notices given with respect to such Series 2005A Bonds be given to the registered owner thereof and to a second address provided in such written notice to the Trustee and the Fiscal Agent. Upon receipt of such notice described in the preceding sentence, the Trustee and the Fiscal Agent, as applicable, shall send all notices relating to the relevant Bonds to the registered owner and the second address so designated.

Section 12.02 *Bondholders' Consents*. Any consent or other instrument required by this Indenture to be signed by Bondholders may be in any number of concurrent documents and may be signed by a Bondholder or by the holder's agent appointed in writing. Proof of the execution of such instrument or of the instrument appointing an agent and of the ownership of Bonds, if made in the following manner, shall be conclusive for any purposes of this Indenture with regard to any action taken by the Trustee under the instrument:

(a) The fact and date of a person's signing an instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within that jurisdiction that the person signing the writing acknowledged before the officer the execution of the writing, or by an affidavit of any witness to the signing.

(b) The fact of ownership of Bonds, the amount or amounts, numbers and other identification of such Bonds and the date of holding shall be proved by the registration books kept pursuant to this Indenture.

In determining whether the holders of the required principal amount of Bonds Outstanding have taken any action under this Indenture, Series 2005A Bonds owned by the Issuer, the Company or any subsidiary or affiliate of either thereof shall be disregarded and deemed not to be Outstanding; provided, however, that Bank Bonds will not be disregarded and shall be deemed to be Outstanding for such purpose. In determining whether the Trustee shall be protected in relying on any such action, only Series 2005A Bonds which the Trustee knows to be so owned shall be disregarded.

Section 12.03 *Notices to Rating Agency*. The Trustee shall notify each Rating Agency in writing of the occurrence of any of the following events prior to the occurrence thereof: (a) any change in the identity of the Trustee, the Fiscal Agent or the Remarketing Agent; (b) any supplement to, amendment or modification of, or change to, this Indenture, the Lease Agreement, the Credit Agreement (to the extent the Trustee has notice thereof) or the Letter of Credit; (c) any change in the Series 2005A Interest Rate determination method, (d) the expiration, substitution or termination of the Letter of Credit, or any extension thereof; (e) the issuance of Additional Series 2005A Bonds; (f) the payment in full of the principal of and interest on the Series 2005A Bonds; (g) the delivery of any written opinion of Bankruptcy Counsel required to be delivered under the terms of this Indenture; and (h) any acceleration of the Bonds

Section 12.04 *Limitation of Rights*. Nothing expressed or implied in this Indenture or the Bonds shall give any person other than the Trustee, the Issuer, the Bank, the Fiscal Agent, the Company, the Underwriter, the Remarketing Agent and the Bondholders any right, remedy or claim under or with respect to this Indenture.

Section 12.05 *Severability*. If any provision of this Indenture shall be determined to be unenforceable by a court of law, such holding shall not affect any other provision of this Indenture; provided, no holding or invalidity shall require the Issuer or the Trustee to make any payment from any source except Receipts and Lease Payments pledged hereunder.

Section 12.06 *Payments Due on Non-Business Days*. If a payment date is not a Business Day at the place of payment, then payment shall be made at that place on the next succeeding Business Day, with the same force and effect as if made on the payment date, and, in the case of any such payment, no interest shall accrue for the intervening period.

Section 12.07 *Governing Law*. This Indenture and the authority of the Issuer to issue the Bonds shall be governed by and construed in accordance with the laws of the State.

Section 12.08 *No Personal Liability of Issuer Officials*. No provision, covenant or agreement contained in this Indenture or the Bonds shall be deemed to be the covenant or agreement of any past, present or future official, officer, agent, director, employee or member of the Issuer, nor shall any breach thereof constitute or give rise to or impose upon the Issuer a pecuniary liability or charge upon its general credit or taxing power. No past, present or future official, officer, agent, employee, director or member of the Issuer shall be personally liable on

this Indenture or the Bonds, in his individual capacity, nor shall such persons executing this Indenture or the Bonds be liable personally on this Indenture or the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 12.09 *Reserved*.

Section 12.10 *Recording and Filing*. The Company shall keep or cause to be kept all financing statements related to this Indenture and all supplements hereto, the Lease Agreement and all supplements thereto and such other documents that are delivered to the Trustee as may be necessary to be filed in such manner and in such places, and, except to the extent otherwise expressly stated in or contemplated by this Indenture, the Trustee shall maintain continuous possession of all portions of the Trust Estate in which a security interest may not be perfected by filing, and the Company shall file all continuation statements as may be required by law in order to preserve, protect, and perfect fully the security of the Owners of the Bonds and the rights of the Trustee hereunder. The Issuer will cooperate with the Trustee in accomplishing the filing of any financing statements to be filed in connection herewith.

Section 12.11 *Counterparts*. This Indenture may be signed in several counterparts, each of which shall be an original and all of which together shall constitute the same instrument.

Section 12.12 *References to the Bank*. The Bank shall have no rights to enforce any provision of this Indenture or to give any consents, approvals or directions or to vote Series 2005A Bonds during any period in which it has dishonored a draw under any Letter of Credit presented in strict compliance with the terms thereof.

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Indenture to be executed in their respective names and the Issuer has caused its corporate seal to be hereunto affixed and attested by its duly authorized officer, all as of the date first above written.

BERNALILLO COUNTY, NEW MEXICO,

By: /s/ ALAN B. ARMIJO
Chair, Board of County Commissioners

(SEAL)

Attest

By: /s/ DIANNE BROWN FOR MARY HERRERA
County Clerk

THE BANK OF NEW YORK TRUST COMPANY, N.A., as trustee

By: /s/ JANALEE R. SCOTT
Title: **Vice President**

LEASE AGREEMENT

Dated as of September 1, 2005

Between

BERNALILLO COUNTY, NEW MEXICO

and

TEMPUR PRODUCTION USA, INC.

Bernalillo County, New Mexico
Industrial Revenue Bonds
(Tempur Production USA, Inc. Project)

Taxable Variable Rate
Series 2005A

Taxable Fixed Rate Unsecured
Series 2005B

Certain rights of Bernalillo County, New Mexico in this Lease Agreement (with certain exceptions) have been pledged and assigned to The Bank of New York Trust Company, N.A., as Trustee, under the Trust Indenture dated as of September 1, 2005, between the Issuer and the Trustee.

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the **"Lease Agreement" or "Agreement"**), dated as of September 1, 2005 between Bernalillo County, New Mexico (the **"Issuer"**), and Tempur Production USA, Inc., a Virginia Corporation (the **"Company"**);

RECITALS

WHEREAS, pursuant to The New Mexico County Industrial Revenue Bond Act, NMSA 1978, Section 4-59-1 *et seq*., as from time to time amended, (the **"Industrial Revenue Bond Act"**), and at the request of the Company, the Issuer will issue up to **$100,000,000** principal amount of **Industrial Revenue Bonds (Tempur Production USA, Inc. Project) in two separate series consisting of the Taxable Variable Rate Series 2005A and the Taxable Fixed Rate Unsecured Series 2005B** (the "Bonds"), under a Trust Indenture of even date herewith (the **"Indenture"**) between the Issuer and The Bank of New York Trust Company, N.A., as Trustee (the **"Trustee"**), for the purpose of providing funds to (a) finance and reimburse the costs of manufacturing facilities of the Company described in the Indenture (the **"Project"**), and (b) pay costs related to the issuance of the Bonds, in consideration of payments by the Company, which will be sufficient to pay the principal and purchase price of, redemption premium, if any, and the interest on the Bonds;

WHEREAS, (i) the Series 2005A Bonds are to be purchased under a Bond Purchase Agreement dated as of October 26, 2005 (together with any and all amendments and supplements, the "Series 2005A Bond Purchase Agreement") among the Issuer, the Underwriter and the Company and (ii) the Series 2005B Bonds are to be purchased under a Bond Purchase Agreement dated as of October 26, 2005 (together with any and all amendments and supplements, the "Series 2005B Bond Purchase Agreement" and together with the Series 2005A Bond Purchase Agreement, the "Bond Purchase Agreement") among the Issuer, Tempur World, LLC and the Company. The Indenture, the Bond Purchase Agreement and this Agreement are referred to as the "Bond Documents.

WHEREAS, Bank of America, N.A. (the **"Bank"**), will issue and deliver to the Trustee its irrevocable direct-pay letter of credit (the **"Letter of Credit"**) providing for payment when due of the principal of and interest on the Series 2005A Bonds, and payment of the purchase price of Series 2005A Bonds tendered for purchase, under a Credit Agreement dated as of October 18, 2005 (the **"Credit Agreement"**) among the Company and certain of its affiliates as borrowers, Tempur-Pedic International, Inc. a Delaware Corporation, and certain of its subsidiaries and affiliates as guarantors, the lenders identified therein and the Bank of America, N.A., as administrative agent, as amended, supplemented, modified, extended, renewed or replaced;

WHEREAS, the proceeds of the Bonds will be used to finance the Project (defined below);

WHEREAS, the Company has conveyed the Project Site (as defined below) to the Issuer pursuant to a special warranty deed and subject to the Permitted Liens. The Project Property is to be leased to the Company under this Lease Agreement (together with all amendments and supplements, this "Agreement");

WHEREAS, the Issuer deems it desirable, in the best interests of its residents and in accordance with the purposes of the Industrial Revenue Bond Act, to issue its Bonds and make the proceeds thereof available to the Company pursuant to this Agreement for the purposes described above and in the Indenture;

WHEREAS, the Bonds will be special limited obligations of the Issuer payable as therein provided and the Bonds will not constitute a debt or pledge of the credit of the Issuer, and owners of the Bonds will have no right to have taxes levied by the Issuer or to require the Issuer to use any revenues for the payment of the Bonds, except for Receipts and Lease Payments (as defined in the Indenture); and

WHEREAS, the Company and the Issuer each have full right and lawful authority to enter into this Agreement and to perform and observe the provisions hereof on their respective parts to be performed and observed;

WHEREAS, the Issuer and the Company are entering into this Lease Agreement to provide for the lease and purchase of the Project from the Issuer by the Company.

NOW, THEREFORE, in consideration of the premises and the mutual representations, and agreements hereinafter contained, the Issuer and the Company agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement will never constitute a general debt of the Issuer or give rise to any pecuniary liability of the Issuer, but will be payable solely out of Receipts and Lease Payments):

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1. Definitions of Words and Terms. For all purposes of this Lease Agreement, except as otherwise provided or unless the context otherwise requires, words and terms used in this Lease Agreement have the same meanings as set forth in **Section 1.01** of the Indenture. In addition to the words and terms defined in the Indenture and elsewhere defined herein, the following words and terms as used herein shall have the following meanings unless the context or use clearly indicates another or different meaning or intent:

"**Bank Documents**" means the Credit Agreement and the Security Documents.

"**Basic Term**" means that term commencing as of the Issue Date of the Bonds and ending on September 1, 2035, subject to prior termination as specified in this Lease Agreement, but ending, in any event, when all of the principal of, redemption premium, if any, and interest on all Outstanding Bonds shall have been paid in full or provision made for their payment in accordance with the provisions of the Indenture.

"**Company Documents**" means this Agreement, the Purchase Agreement, the Remarketing Agreement, and the Bank Documents.

"**Completion Date**" means the date determined pursuant to Section 3.9 hereof.

"**Default**" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an event of default hereunder.

"**Environmental Assessment**" means an environmental assessment with respect to the Project conducted by an independent consultant reasonably satisfactory to the Issuer and Trustee which reflects the results of such inspections, records reviews, soil tests, groundwater tests and other tests requested, which assessment and results shall be reasonably satisfactory in scope, form and substance to the Issuer and the Trustee.

"**Event of Default**" means one of the events so denominated and described in **Section 7.1** of this Lease Agreement.

"**Facility**" means a facility used in connection with the Company's manufacturing operations to be operated by the Company in Bernalillo County, New Mexico.

"**Improvements**" means all equipment, furniture, furnishings, computers and other systems and all other personal property of any kind which is subject to depreciation for federal income tax purposes and is suitable for use and used in the Facility.

"**Issue Date**" means the date on which the Bonds are initially authenticated and delivered to the owners of the Bonds in exchange for payment of the purchase price for the Bonds.

"**Lease Term**" means the Basic Term of this Lease Agreement.

"**Payment in Full of the Bonds**" specifically encompasses the situations referred to in Section 7.01 of the Indenture.

"**Permitted Liens**" means, as of any particular time, (i) all taxes, assessments and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project Property; all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project Property and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by any lien on the Project Property; (ii) this Agreement and any assignment or lease permitted by this Agreement, (iii) mechanics', materialmen's, carriers' and other similar liens, provided that the same are satisfied, terminated, or released in the ordinary course of business, and (iv) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title to the Project Property as normally exist with respect to similar properties and as do not, individually or in the aggregate, materially impair the Project Property for the purpose for which it is used by the Company or materially detract from the value of the Project Property.

"**Plant**" shall mean all property, equipment and other assets now or hereafter owned or used by the Company at its location in or near Bernalillo County, Albuquerque, New Mexico in connection with the Company's business of manufacturing and selling mattresses, but excluding the Project.

"**Project Property**" means the Project Site, the Facility and the Improvements

"**Project Site**" shall mean the real property in Bernalillo County, New Mexico to be acquired as part of the Project as described on *Exhibit D*.

"**Security Documents**" means the Mortgage, Assignment, Security Agreement and Fixture Filing dated as of October 27, 2005 between the Company, Issuer and the Bank, and all assignments made by the Company and/or Issuer to the Bank to secure its obligations to the Bank under the Credit Agreement.

Section 1.2. Rules of Construction. For all purposes of this Lease Agreement, except as otherwise provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Lease Agreement:

(a) The defined terms referred to in this Article include the plural as well as the singular.

(b) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.

(c) The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or other subdivision.

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

(e) Whenever an item or items are listed after the word "including," such listing is not intended to be a listing that excludes items not listed.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the Issuer. The Issuer represents and warrants to the Company and the Trustee as follows:

(a) *Organization and Authority*. The Issuer is a political subdivision, organized and existing under the laws of the State. The Issuer has all requisite power and authority under the Act to (i) issue the Bonds, (ii) lend the proceeds thereof to the Borrower to assist the Borrower in financing the cost of acquiring, constructing, equipping and installing the Project, and (iii) enter into, and perform its obligations under this Agreement, the Purchase Agreement, and the Indenture.

(b) *Pending Litigation*. There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Issuer threatened, against or affecting the Issuer in any court or before any governmental authority or arbitration board or tribunal, which involve the possibility of materially and adversely affecting the transactions contemplated by this Agreement, the Purchase Agreement, the Remarketing Agreement or the Indenture or which, in any way, would materially and adversely affect the validity or enforceability of the Bonds, the Indenture, the Purchase Agreement, the Remarketing Agreement, this Agreement or any agreement or instrument to which the Issuer is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby.

(c) *Issue, Sale and Other Transactions Are Legal and Authorized*. The issuance and sale of the Bonds and the execution and delivery by the Issuer of this Agreement, the Purchase Agreement and the Indenture, and the compliance by the Issuer with all of the provisions of each thereof and of the Bonds (i) are within the purposes, powers and authority of the Issuer, (ii) have been done in full compliance with the provisions of the Act, (iii) are legal and will not conflict with or constitute on the part of the Issuer a violation of or a breach of or default under, or result in the creation of any lien, charge or encumbrance upon any property of the Issuer (other than as contemplated in the Indenture) under the provisions of, any activating resolution, by-law, indenture, mortgage, deed to secure debt, note agreement or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound, or to the best of Issuer's knowledge any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its activities or properties, and (iv) have been duly authorized by all necessary corporate action on the part of the Issuer.

(d) *Governmental Consents*. Neither the nature of the Issuer nor any of its activities or properties, nor any relationship between the Issuer and any other person, nor any circumstance in connection with the issue, sale or delivery of any of the Bonds is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority on the part of the Issuer in connection with the execution, delivery and performance of this Agreement, the Purchase Agreement or the Indenture or the issue, sale or delivery of the Bonds, other than those already obtained; provided, however, no representation is made as to compliance with any federal or state securities or "blue sky" law.

(e) *No Defaults*. To the best of Issuer's knowledge, no event has occurred and no condition exists with respect to the Issuer which would constitute an "event of default" as defined in this Agreement, the Purchase Agreement or the Indenture or which, with the lapse of time or with the giving of notice or both, would become such an "event of default." The Issuer is not in default under the Industrial Revenue Bond Act or under any charter instrument, by-law or other agreement or instrument to which it is a party or by which it is bound which default would adversely affect the enforceability or taxability of the Bonds.

(f) *No Prior Pledge*. Neither this Lease Agreement nor any of the Receipts and Lease Payments have been pledged or hypothecated in any manner or for any purpose other than as provided in the Indenture as security for the payment of the Bonds.

(h) *Nature and Location of Project*. The financing of the costs of the Project, together with related expenses, is authorized under the Act and is in furtherance of the public purpose for which the Issuer was created. The Project is located within the boundaries of the Issuer.

(i) *Limited Obligation*. Notwithstanding anything herein contained to the contrary, any obligation the Issuer may hereby incur for the payment of money shall not constitute an indebtedness of the Issuer or of the State or of any political subdivision thereof within the meaning of any state constitutional provision or statutory limitation and shall not give rise to a pecuniary liability of the Issuer or the State or any political subdivision thereof, or constitute a charge against the general credit or taxing power of said Issuer or the State or any political subdivision thereof, but shall be limited obligations of the Issuer payable solely from (i) Receipts and Lease Payments, (ii) revenues derived from the sale of Bonds, and (iii) amounts on deposit from time to time in the Bond Funds, subject to the provisions of this Lease Agreement and the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein and therein.

Section 2.2. No Representation or Warranty by Issuer as to Project. The Issuer makes no representation or warranty concerning the suitability of the Project for the purpose for which it is being used by the Company. The Issuer has not made any independent investigation as to the feasibility or creditworthiness of the Company. Any bond purchaser, assignee of the Lease Agreement or any other party with any interest in this transaction, shall make its own independent investigation as to the creditworthiness and feasibility of the Project, independent of any representation or warranties of the Issuer.

Section 2.3. Representations by the Company. The Company represents and warrants, as of the date of this Agreement, to the Issuer and the Trustee as follows:

(a) *Organization and Authority*. The Company (i) is a Virginia corporation duly organized, validly existing and in good standing and qualified to do business under the laws of the State, and (ii) has all requisite power and authority to enter into and perform the agreements and covenants contained in the Company Documents and all necessary licenses and permits to own and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted.

(b) *No Defaults or Violations of Law*. There are no proceedings pending, or to the knowledge of the Company threatened, against or affecting the Company in any court or before any governmental authority, arbitration board or tribunal which if adversely determined, would materially and adversely affect the transactions contemplated by this Agreement, the Purchase Agreement, the Remarketing Agreement or the Indenture or which, in any way, would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of the Company, or the ability of the Company to perform its obligations under the Company Documents. The Company is not in default with respect to an order of any court, governmental authority, arbitration board or tribunal.

(c) *Agreements Are Legal and Authorized*. The execution and delivery by the Company of each of the Company Documents and the compliance by the Company with all of the provisions hereof and thereof (i) are within the corporate power of the Company, (ii) will not conflict with or result in any breach of any of the provisions of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property of the Company under the provisions of, any agreement, articles of incorporation, by-laws or other instrument to which the Company is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its activities or properties, and (iii) have been duly authorized by all necessary corporate action on the part of the Company.

(d) *Governmental Consent*. Neither the Company nor any of its business or properties, nor any relationship between the Company and any other person, nor any circumstances in connection with the execution, delivery and performance by the Company of the Company Documents or the offer, issue, sale or delivery by the Issuer of the Bonds, is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority on the part of the Company other than those already obtained; provided, however, that no representation is made as to any consents, approvals or authorizations required in connection with the construction or occupancy of the Project.

(e) *No Defaults*. No event has occurred and no condition exists with respect to the Company that would constitute an “event of default” under any of the Company Documents or which, with the lapse of time or with the giving of notice or both, would become such an “event of default.” The Company is not in violation in any material respect of any agreement, articles of incorporation, by-laws or other instrument to which it is a party or by which it may be bound.

(f) *Compliance with Law*. The Company is not in violation in any material way of any laws, ordinances, governmental rules or regulations to which it is subject and has not failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its properties or to the conduct of its business, which violation or failure to obtain might materially and adversely affect the properties, business, prospects, profits or conditions (financial or otherwise) of the Company.

(g) *Reserved*.

(h) *Inducement*. The issuance of the Bonds by the Issuer and the lending of the proceeds thereof to the Company to enable the Company to acquire, construct and equip the Project have induced the Company to locate the Project in Bernalillo County, New Mexico.

(i) *Estimated Time of Completion of the Project*. The Company estimates that the Project will be completed and ready for occupancy by April 30, 2006.

(h) *Use of Proceeds*. The proceeds from the sale of the Bonds will be used only for payment of Costs of the Project and related costs of issuance of the Bonds authorized and permitted by the Industrial Revenue Bond Act.

Section 2.4. Modification of Agreement. Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease Agreement may not be amended, changed, modified, altered or terminated except as permitted herein and by the Indenture and with the written consent of the Company, the Trustee and, if a Letter of Credit is in place, the Bank.

ARTICLE III

ISSUANCE OF THE BONDS; USE OF PROCEEDS

Section 3.1. Issuance of the Bonds; Use of Proceeds. The Issuer shall issue the Bonds for the purposes and upon the terms and conditions provided in this Lease Agreement and the Indenture. Proceeds of the Initial Bonds and Additional Bonds will be deposited in the Project Fund created in the Indenture. The moneys in the Project Fund shall be used to finance the acquiring, constructing, installing and equipping of the Project and for paying certain of the costs of issuing the Bonds.

Section 3.2. Agreement to Acquire, Construct, Install and Equip the Project. The Company shall cause the acquisition, construction, installation and equipping of the Project to be completed substantially as described in *Exhibit A*, as such *Exhibit A* may be amended from time to time by the Company; provided, that in the case of any material change in such *Exhibit A* there shall be filed with the Issuer, the Bank and the Trustee the written approving Opinion of Bond Counsel to the effect that such change shall be permitted by the Industrial Revenue Bond Act. The Company agrees to obtain all licenses, permits and consents required for the acquisition, construction, installation and equipping of the Project, and the Issuer shall have no responsibility therefor.

The Company will not take any action or fail to take any action which would adversely affect the qualification of the Project under the Industrial Revenue Bond Act.

Section 3.3 [Reserved]

Section 3.4. Application of Company Moneys. If the proceeds derived from the sale of the Bonds issued for such purpose are not sufficient to pay in full the Costs of the Project, the Company shall pay so much of the cost thereof as may be in excess of the proceeds of the Bonds and any investment income thereon available therefor. The Company agrees that if, after exhaustion of the proceeds derived from the sale of the Bonds and investment income thereon, the Company pays any portion of the Costs of the Project pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Issuer or the Trustee nor shall it be entitled to any abatement, diminution or postponement of its payments hereunder.

Section 3.5. LIMITATION OF ISSUER'S LIABILITY. ANYTHING CONTAINED IN THIS LEASE AGREEMENT TO THE CONTRARY NOTWITHSTANDING, ANY OBLIGATION THE ISSUER MAY INCUR IN CONNECTION WITH THE UNDERTAKING OF THE PROJECT FOR THE PAYMENT OF MONEY SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, BUT SHALL BE PAYABLE SOLELY AS DESCRIBED AND IN ACCORDANCE WITH SECTION 12.4 OF THIS LEASE AGREEMENT.

Section 3.6. DISCLAIMER OF WARRANTIES. The Company recognizes that since the Project has been acquired, constructed and equipped by the Company and by contractors and suppliers selected by the Company, THE ISSUER DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE PURPOSES OF THE COMPANY OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL PAY THE COST TO BE INCURRED IN CONNECTION THEREWITH.

Section 3.7. Payments from Project Fund. The Trustee shall use and disburse moneys in the Project Fund solely in accordance with **Section 4.07** of the Indenture.

Section 3.8. Deposits of Bond Proceeds and Security for Deposits. All moneys received by the Issuer in connection with the issuance of the Bonds (other than for its fees and expenses) shall be deposited in the applicable account of the Project Fund created under the Indenture. All such moneys deposited shall be applied in accordance with the terms and for the purposes herein set forth and shall not be subject to lien or attachment by any creditor of the Issuer.

Section 3.9. Investment of Funds. Any moneys held in the any funds created under the Indenture shall be invested or reinvested by the Trustee as set forth in **Section 4.11** of the Indenture, to the extent permitted by law, in the Permitted Investments, at the telephonic or oral direction (confirmed in writing) of the Company Representative.

Section 3.10. [Reserved].

Section 3.11. Establishment of Completion Date. The Completion Date shall be evidenced to the Issuer and the Trustee by a Certificate in the form attached as *Exhibit B* hereto signed by a Company Representative stating (i) the Costs of the Project, (ii) that the acquisition, construction, furnishing and equipping of the Project have been completed and the date thereof, and (ii) that, except for amounts retained by the Trustee for the Costs of the Project not then due and payable, if any, the full Costs of the Project has been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which subsequently may come into being.

ARTICLE IV

LEASE OF THE PROJECT; PAYMENT PROVISIONS

Section 4.1 Effective Date. The parties acknowledge that after the Issue Date their relationship with respect to the Project will be governed by the provisions of this Lease Agreement.

Section 4.2. Granting of Leasehold Estate; Basic Term. At the Issue Date, title to the Project Site and the Project is in Bernalillo County, New Mexico. As of the Issue Date of the Bonds, the Issuer hereby rents, leases, and lets the Project (including the Project Site) to the Company, and the Company hereby rents and leases, the Project (including the Project Site) from the Issuer, for the rentals and upon and subject to the terms and conditions herein contained, for the Basic Term.

Section 4.3. Lease Payments. The Company shall make the following payments to provide for payment of the interest on and principal of, and redemption premium, if any, on the Bonds, directly to the Trustee, in immediately available funds, for deposit in the Bond Fund, on the following dates, and otherwise as set out below:

(a) *Bond Fund—Interest:* On or before **1:30 p.m.**, New York City time, on each Interest Payment Date or any other date that any payment of interest is required to be made in respect of the Bonds pursuant to

the Indenture, an amount which is, together with any other moneys available for such purpose in such Bond Fund, not less than the interest to become due on the Bonds on such Interest Payment Date or other date that interest is due.

(b) *Bond Fund—Principal:* On or before **1:30 p.m.**, New York City time, on each principal payment date on the Bonds (whether at maturity or acceleration or otherwise), an amount which, together with any other moneys available for such purpose in such Bond Fund, is not less than the principal due on the Bonds on the next principal payment date by maturity, redemption, acceleration or otherwise.

(c) *Bond Fund—Redemption:* On or before the date required by this Lease Agreement or the Indenture, the amount required to redeem the Bonds then Outstanding if the Company exercises its right to redeem the Bonds under any provision of the Indenture or if any of the Bonds are required to be redeemed under any provision of the Indenture.

The Company shall receive a credit against its obligations to make Lease Payments under this Section, and the obligation of the Company to make any such payment hereunder shall be deemed satisfied and discharged to the extent of the corresponding payment under the Series 2005A Bonds made by the Bank to the Trustee under the Letter of Credit; provided further, however, that to the extent such payment is not made under the Letter of Credit, the Company is obligated to make full payment.

If the Company fails to make any of the payments required in this Section, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid, and the Company agrees to pay the same with interest thereon from the date when such payment was due until paid in full, at the rate of interest borne by the Bonds until paid in full.

Section 4.4. Letter of Credit; Substitute Letter of Credit.

(a) The Letter of Credit delivered to the Trustee simultaneously with the original issuance and delivery of the Series 2005A Bonds as increased from time to time as provided herein and in the Indenture constitutes an irrevocable obligation of the Bank to pay to the Trustee, upon request and in accordance with the terms thereof, up to an amount equal to the sum of (i) the principal amount of the Series 2005A Bonds then outstanding plus (ii) an amount equal to interest for 35 days on the principal amount of each Series 2005A Bond then outstanding at the rate of twelve percent (12%) per annum.

(b) The Company shall have the option from time to time to provide the Trustee with a Substitute Letter of Credit in accordance with the provisions of Section 5.03 of the Indenture. If at any time there shall have been delivered to the Trustee a Substitute Letter of Credit, together with the other documents and opinions required by this Section 5.03 of the Indenture, then the Trustee shall accept such Substitute Letter of Credit and promptly surrender the previously held Letter of Credit to the issuer thereof for cancellation, in accordance with the terms of such Letter of Credit. If at any time there shall cease to be any Series 2005A Bonds outstanding under the Indenture, the Trustee shall promptly surrender the Letter of Credit to the issuer thereof, in accordance with the terms of such Letter of Credit, for cancellation. The Trustee shall comply with the procedures set forth in the Letter of Credit relating to the termination thereof.

Section 4.5. Additional Payments.

(a) The Company shall pay, or cause to be paid, an amount equal to (i) the fees and expenses of the Trustee incurred in connection with the rendering of its ordinary and extraordinary services as Trustee under the Indenture, as and when the same become due, including the reasonable fees and expenses of its Counsel actually incurred, (ii) the fees and expenses of the Fiscal Agent for acting as Fiscal Agent for the Bonds, including the reasonable fees and expenses of its Counsel, (iii) the fees and expenses of the Underwriter for the Series 2005A Bonds, including the reasonable fees and expenses of its Counsel, and any other amounts due and payable to the Underwriter under the Purchase Agreement, (iv) the fees and expenses of the Remarketing Agent for serving as Remarketing Agent for the Bonds, including the reasonable fees and expenses of its Counsel, and any other

amounts due and payable to the Remarketing Agent under the Remarketing Agreement, (v) the fees and expenses of the Rating Agency for issuing and maintaining its securities rating on the Series 2005A Bonds, and (vi) the Issuer's Administrative Fee and its out-of-pocket expenses, administrative expenses and reasonable fees and expenses of Counsel to the Issuer.

The Company may, without constituting grounds for an Event of Default hereunder, withhold payment of any such fees and expenses of the Trustee or the Fiscal Agent (other than such ordinary fees and expenses of the Trustee and Fiscal Agent as may be agreed to by the Company pursuant to written agreement with the Trustee or the Fiscal Agent, as applicable), to contest in good faith the necessity for any extraordinary services of the Trustee and the reasonableness of any extraordinary expenses of the Trustee, or to contest in good faith the necessity for any services performed and expenses paid or incurred by, and the reasonableness of any additional fees, charges or expenses of, the Fiscal Agent. If the Company should fail to make any of the payments required in this Section, the item or installment which the Company has failed to make shall continue as an obligation of the Company until the same shall have been fully paid, with interest thereon at the rate per annum borne by the Bonds until paid in full.

(b) The Company shall also pay to the Trustee, at the times and in the amounts and manner therein specified, the amounts required in order to purchase any Series 2005A Bond tendered for purchase pursuant to the Indenture; provided, however, that the amounts required to be paid by the Company under this paragraph shall be reduced by the amounts made available for such purpose from the proceeds of the remarketing of such Series 2005A Bonds by the Remarketing Agent deposited in the Bond Fund or through payments by the Bank under the Letter of Credit deposited in the Bond Fund under **Section 4.03** of the Indenture. The Company authorizes and directs the Trustee to demand money under the Letter of Credit in accordance with the provisions of the Indenture to the extent necessary for the purchase of Series 2005A Bonds pursuant to the Indenture. The Company authorizes and directs the Trustee to apply the payments made by or on behalf of the Company under this paragraph to the payment of the purchase price of Series 2005A Bonds.

Section 4.6. Obligations Absolute and Unconditional. Subject to the provisions of Section 7.5 hereof, the obligations of the Company to make or to cause (pursuant to the Letter of Credit) to be made the payments required in Sections 4.3 and 4.5 and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional and shall not be subject to diminution by set-off, counterclaim, abatement or otherwise by reason of any action or inaction of the Trustee, the Issuer or any third party. Until such time as the principal of, and the interest on, the Bonds shall have been paid in full, the Company (a) will not suspend or discontinue any payments provided for in Sections 4.3 and 4.5 except to the extent the same have been prepaid or are being contested in good faith as provided in Section 4.5, (b) will perform and observe all its other agreements contained herein, and (c) except as provided in Article VII hereof, will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, sale, loss, eviction or constructive eviction, destruction of or damage to the Project, condemnation, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection herewith or with the Indenture. Notwithstanding the foregoing, the obligation of the Company to make payments hereunder shall be satisfied and discharged to the extent moneys are received by the Trustee pursuant to the Letter of Credit. Nothing contained in this Section shall be construed to release the Issuer from the performance of any of the agreements on its part herein contained; and if the Issuer should fail to perform any such agreement, the Company may institute such action against the Issuer as the Company may deem necessary to compel performance so long as such action shall not impair the agreements on the part of the Company hereunder.

Nothing contained herein shall be construed as a waiver of any rights which the Company may have against the Issuer under this Agreement, or against any person under this Agreement, the Indenture or otherwise, or under any provision of law; provided, however, that the Company shall pursue any rights or remedies against the Issuer, the Trustee, any Bondholder or any third party in connection herewith, or in connection with the

Indenture, the Company Documents, the Bank Documents or otherwise relating to the Bonds and security therefor only in a separate action, and not by way of any set-off, counterclaim, cross-claim or third party action in any suit brought to enforce the rights of the Bondholders, the Trustee or the Issuer under this Agreement, the Indenture, the Company Documents, the Bank Documents or otherwise in connection herewith; and provided further, that in order to preserve the right of the Company to raise such issues in any separate suit, any claim of the Company which, but for this Section 4.6, would be a compulsory counterclaim, shall be identified as such in the first responsive pleading filed by the Company to any action brought by the Issuer, Trustee, any Bondholder or any person.

Section 4.7. Assignment of Issuer's Rights. Under the Indenture, the Issuer has pledged, assigned, transferred in trust and granted a security interest to the Trustee in all of the Issuer's rights, title and interest under this Lease Agreement (except for the Issuer's rights to payment of its fees and expenses, the Issuer's right to indemnification in certain circumstances expressly set forth in this Lease Agreement, the Issuer's right to receive PILOT payments in satisfaction of Section 6.20 and the covenants contained in Section 6.21 hereof) as security for the Bonds, and such rights, title and interest may be exercised, protected and enforced for or on behalf of the owners of the Bonds in conformity with this Lease Agreement and the Indenture. The Trustee is hereby given the right to enforce, as assignee of the Issuer, the performance of the obligations of the Company under this Lease Agreement, and the Company hereby consents to the same and agrees that the Trustee may enforce such rights as provided in this Lease Agreement and in the Indenture. The Issuer and the Company recognize that the Trustee is a third party creditor-beneficiary of this Lease Agreement.

Section 4.8. Company's Performance Under Indenture. The Company agrees, for the benefit of the Bondholders, to do and perform all acts and things contemplated in the Indenture to be done or performed by it.

ARTICLE V

THE BANK

Section 5.1. Rights of Bank. The provisions in this Lease Agreement relating to the Bank shall apply for so long as the Series 2005A Bonds are Outstanding and the Letter of Credit remains in effect and the Bank is not insolvent and is not in default of its payment obligations under the Letter of Credit, unless any such provision is waived by the Bank or modified by agreement between the Bank and the Company. Anything contained in this Lease Agreement, the Indenture or the Bonds to the contrary notwithstanding, the existence of all rights given to the Bank under this Lease Agreement and the Indenture with respect to the giving of consents or approvals or the direction of proceedings are expressly conditioned upon its full performance of the Letter of Credit. Any such rights shall not apply at any time that the Bank wrongfully fails to make any payment under the Letter of Credit which failure has not been cured; provided, that this Lease Agreement shall not in any way limit or affect the rights of the Bank as a bondowner, as subrogee of a bondowner or as assignee of a bondowner or to otherwise be reimbursed and indemnified for its costs and expenses and other payment on or in connection with the Bonds or the Letter of Credit either by operation of law or at equity or by contract. The rights, if any, given to the Bank hereunder shall be further subject to the provisions of **Sections 8.13 and 8.14** of the Indenture.

Section 5.2. Limitation on Rights of the Bank. Notwithstanding any provision of this Lease Agreement to the contrary, no consent of or notice to the Bank shall be required under any provision of this Lease Agreement nor shall the Bank have any right to consent to, direct or control any actions, restrictions, rights, remedies, waivers or acceleration pursuant to any provision of this Lease Agreement during any time which:

(a) the Bank has wrongfully failed to honor a properly presented draw made under and in strict compliance with the terms of the Letter of Credit which failure has not been cured; or

(b) the Letter of Credit is not in effect and no amounts are due and payable by the Company to the Bank under the Credit Agreement.

Section 5.3. Payments by Bank. The Bank shall, to the extent of any payments made by it pursuant to the Letter of Credit, be subrogated to all rights of the Issuer or its assigns (including, without limitation, the Trustee) as to all obligations of the Company with respect to which such payments shall be made by the Bank, but, so long as any of the Series 2005A Bonds remain Outstanding under the terms of the Indenture, such right of subrogation on the part of the Bank shall be in all respects subordinate to all rights and claims of the Issuer for all payments (except Lease Payments hereunder required to pay debt service on the Series 2005B Bonds) which are then due and payable under the Indenture or otherwise arising under this Agreement, the Indenture or the Series 2005A Bonds. The Trustee will, upon request, execute and deliver any instrument reasonably requested by the Bank to evidence such subrogation and the Trustee shall assign to the Bank its rights in any obligations of the Company with respect to which payment of the entire principal balance and accrued interest thereon shall be made by the Bank.

ARTICLE VI

PARTICULAR AGREEMENTS

Section 6.1. Maintenance, Operation and Insuring of Project; Taxes; No Operation of Project by Issuer. The Company hereby agrees that it will at its own expense maintain and operate all portions of the Project during their useful lives or until they are replaced with facilities necessary in their operation. This Agreement does not prevent the Company from merging or consolidating with another entity as permitted by Section 6.3. The Company further agrees that, except for taxes contested in good faith, it will pay all taxes levied with respect to the Project and the income therefrom and that it will at its own expense keep the Project properly insured against loss or damage from such perils usually insured against by businesses operating or owning like properties and maintain public liability insurance and all such worker's compensation or other similar insurance as may be required by law. Evidence of such insurance will be furnished to the Bank and, if there is no Bank, to the Trustee upon request. Nothing contained in this Agreement shall be deemed to authorize or require the Issuer to operate the Project or to conduct any business enterprise in connection therewith

Section 6.2. Issuer's, Trustee's, and Fiscal Agent's Expenses; Release and Indemnification Provisions. The Company agrees, whether or not the transactions contemplated by the Company Documents and the Indenture shall be consummated, to indemnify and hold harmless the Issuer and its officers, commissioners, directors, officials, employees and agents, including the Trustee, the Fiscal Agent, counsel to the Issuer and financial advisor to the Issuer (any and all of the foregoing being hereinafter referred to as the "Indemnified Persons"), from and against any and all claims, actions, suits, proceedings, expenses, judgments, damages, penalties, fines, assessments, liabilities, charges or other costs (including, without limitation, all attorneys' fees and expenses incurred in connection with enforcing this Agreement or collecting any sums due hereunder and any claim or proceeding or any investigation in connection therewith) relating to, resulting from or in connection with (a) any cause whatsoever in connection with the Project, including, without limitation, the acquisition, design, construction, installation, equipping, operation, maintenance or use thereof or the financing thereof including any expenses arising from the failure to make payment of principal and interest on the Bonds; (b) any act or omission of the Company or any of its agents, contractors, servants, employees or licensees, in connection with the Project; (c) the issuance and sale of the Bonds; and (d) a misrepresentation or breach of warranty by the Company hereunder or under any of the Company Documents, or any violation by the Company of any of its covenants hereunder or under any of the other Company Documents. This indemnity is effective only with respect to any loss incurred by the Indemnified Persons not due to willful misconduct, gross negligence, or bad faith on the part of such Indemnified Persons. In case any action or proceeding shall be brought against one or more of the Indemnified Persons and in respect of which indemnity may be sought as provided herein, such Indemnified Person or Indemnified Persons shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Person or Indemnified Persons, payment of all expenses and the right to negotiate and consent to settlement; but the failure to notify the Company as provided herein shall not relieve the Company from any liability that it may have (i) under this Section, so long as the Company is given the reasonable opportunity to

defend such claim, except to the extent that such failure causes actual harm to the Company or prejudices its ability to defend such claim, and (ii) otherwise than under this Section. Any one or more of the Indemnified Persons shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the reasonable fees and expenses of such counsel shall be at the expense of such Indemnified Persons or Indemnified Persons unless (x) the employment of such counsel has been specifically authorized in writing by the Company, (y) the named parties to any such action (including any impleaded parties) include both the Company and such Indemnified Person or Indemnified Persons and representation of both the Company and such Indemnified Person or Indemnified Persons by the same counsel would, in the opinion of the Indemnified Party, be inappropriate due to actual or potential differing interests between them, or (z) the Indemnified Person or Indemnified Persons have been advised by Counsel that one or more legal defenses may be available to any or all of them which may not be available to the Company, in which case the Company shall not be entitled to assume the defense of such suit notwithstanding its obligation to bear the fees and expenses of such counsel. The Company shall not be liable for any settlement of any such action effected without its consent, but if settled with such consent or if there is a final judgment in any such action with or without consent, the Company agrees to indemnify and hold harmless the Indemnified Person or Indemnified Persons, except as otherwise provided in this Section 6.2, from and against any loss by reason of such settlement or judgment.

The provisions of this Section shall survive the termination of this Agreement.

Section 6.3. Maintenance of Existence. Except as otherwise expressly provided in this Lease Agreement, the Company shall (1) preserve and keep in full force and effect its legal existence, and (2) remain qualified to do business and conduct its affairs in each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification, except where failure to qualify would not be reasonably expected to have a material adverse effect on the Company. The Company agrees that so long as any Series 2005A Bonds remain outstanding it shall not merge or consolidate with any other entity and shall not transfer or convey all or substantially all of its property, assets and licenses; provided, however, the Company may, without violating any provision hereof, consolidate with or merge into another domestic entity (*i.e.*, an entity existing under the laws of one of the states of the United States of America or the District of Columbia) or permit one or more other domestic entities to consolidate with or merge into it, or transfer all or substantially all of its assets to another domestic entity, but only on the condition that: (i) the assignee entity or the entity resulting from or surviving such merger (if other than the Company) or consolidation or the entity to which such transfer is made expressly assumes in writing and agrees to perform all of the Company's obligations hereunder and under the Bank Documents and the other Company Documents; (ii) in connection with any such consolidation, merger or transfer, the Bank shall expressly ratify and affirm that the Letter of Credit remains in full force and effect; and (iii) the surviving entity shall preserve and keep in full force and effect all licenses and permits necessary to the proper conduct of its business.

Section 6.4. Agreement of Issuer Not to Assign or Pledge. Except for the assignment and pledge of the Trust Estate in the Indenture, the Issuer agrees that it will not attempt to further assign, pledge, transfer or convey its interest in or create any assignment, pledge, lien, charge or encumbrance of any form or nature with respect to any of the property, moneys, securities and rights granted by the Issuer to the Trustee under the Granting Clause of the Indenture.

Section 6.5. Redemption of Bonds. The Issuer or the Trustee, at the request of the Company at any time and from time to time, and if the same are then redeemable, shall forthwith take all steps that may be necessary under the applicable redemption provisions of the Indenture to effect redemption of all or any portion of the Bonds, as may be specified by the Company, on the earliest redemption date on which such redemption may be made under such applicable provisions or upon the date set for the redemption by the Company pursuant to Article IX hereof. As long as the Company is not in default hereunder and the Issuer is not obligated to call Bonds pursuant to the terms of the Indenture, neither the Issuer nor the Trustee shall redeem any Bond prior to its stated maturity unless requested to do so in writing by the Company.

Section 6.6. Reference to Bonds Ineffective After Bonds Paid. Upon Payment in Full of the Bonds and all fees and charges of the Trustee and the Fiscal Agent, all references herein to the Bonds, the Fiscal Agent and the Trustee shall be ineffective and neither the Issuer, the Fiscal Agent, the Trustee nor the holders of any of the Bonds shall thereafter have any rights hereunder and the Company shall have no further obligation hereunder, saving and excepting those that shall have theretofore vested and any right of any Indemnified Person (as defined in Section 6.2) to indemnification under Section 6.2, which right shall survive the payment of the Bonds and the termination of this Agreement. Reference is hereby made to Section 7.01 of the Indenture, which sets forth the conditions upon the existence or occurrence of which Payment in Full of the Bonds shall be deemed to have been made.

Section 6.7. Assignment, Sale or Lease of Project. The Company may assign its interest in this Agreement and may sell, lease or otherwise dispose of the Project, in whole or in part, provided that (a) the purchaser, lessee or transferee in such transaction shall be bound by the terms and provisions of this Agreement, and (b) such transaction shall not affect the liability of the Bank under the Letter of Credit.

Section 6.8. Financing Statements. The Company hereby covenants and agrees with the Issuer and the Trustee that it will pay all costs associated with the filing of any financing statements or continuation statements to be filed as required by law in order to fully protect the rights of the Trustee under the Indenture and will cooperate with the Trustee to effectuate the Trustee's filing of any such continuation statements.

Section 6.9. Compliance with Credit Agreement. The Company hereby covenants and agrees that it will comply with all covenants and obligations applicable to it in the Credit Agreement from time to time in effect or, if the Credit Agreement is terminated prior to the termination of this Agreement, the Company agrees to comply with all covenants and obligations applicable to it in the Credit Agreement as in effect immediately prior to the termination thereof until the termination of this Agreement and the payment of the Company's obligation hereunder.

Section 6.10. Inspection of Project. The Issuer, the Trustee and their duly authorized agents shall have the right, upon not less than two Business Days' notice to the Company and during normal business hours, to enter upon any part of the premises of the Company at which the Project is located and examine and inspect the same as may be reasonably necessary for the purpose of determining whether the Company is in compliance with its obligations under Section 6.1 or in the event of failure of the Company to perform its obligations under Section 6.1, and the Issuer, the Trustee and their duly authorized agents shall also have the right, upon not less than two Business Days' notice to the Company and during normal business hours, to examine the books and records of the Company insofar as such books and records relate to the acquisition, construction, installation and maintenance of the Project.

Section 6.11. Project List. The Company shall maintain at the Project site a list setting forth in reasonable detail all items constituting the Project.

Section 6.12. No Warranty of Condition or Suitability by Issuer. The Company recognizes that the Issuer does not deal in goods of the kind comprising components of the Project or otherwise hold itself out as having knowledge or skill peculiar to the practices or goods involved in the Project, and that the Issuer is not one to whom such knowledge or skill may be attributed by its employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill. The Company further recognizes that since the components of the Project have been and are to be designated and selected by the Company, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND, EXCEPT AS OTHERWISE PROVIDED HEREIN, THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR TO THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, IT

BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE COMPANY. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED (TO THE EXTENT PERMITTED BY APPLICABLE LAW), WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE U.C.C. OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

Section 6.13 Depreciation and Investment Tax Credit. The Issuer agrees that any depreciation or investment tax credit with respect to the Project or any part thereof shall be made available to the Company, and the Issuer will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation or investment tax credit.

Section 6.14. Alteration of Project. The Company shall have and is hereby given the right, at its sole cost and expense, to make such changes and alterations in and to any part of the Project as the Company from time to time may deem necessary or advisable without consent of the Issuer or the Trustee; provided, however, the Company shall not, unless required by law, rule or regulation, make any major change or alteration which will materially adversely affect the intended use or structural strength of any part of the Project. All changes and alterations made by the Company pursuant to the authority of this Article shall (a) be made in a workmanlike manner and in material compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, shall be deemed a part of the Project; provided, however, that additions of machinery, equipment and/or personal property of the Company, not purchased or acquired from proceeds of the Bonds and not constituting a part of the Project shall remain the separate property of the Company and may be removed by the Company at any time; provided further, however, that all such additional machinery, equipment and/or personal property which remains in the Project 90 days after the termination of this Lease Agreement for any cause other than the purchase of the Project pursuant to **Article X** hereof shall, subject to the Bank's rights therein granted pursuant to the Security Documents, thereupon become the separate and absolute property of Issuer.

Section 6.15. Release of Certain Land from the Agreement. Notwithstanding any other provision of this Lease Agreement, the parties hereto reserve the right at any time and from time to time upon mutual consent, with the consent of the Bank which consent shall not unreasonably be withheld, to amend this Lease Agreement to effect the release of and removal from this Lease Agreement and the leasehold estate created hereby of any unimproved part or parts of the real estate constituting the Project Site (on which none of the Project is situated); provided, that if at the time any such amendment is made any of the Bonds are Outstanding and unpaid there shall be deposited with the Trustee the following:

(a) A copy of said amendment as executed;

(b) A resolution of the Board of Directors of the Company (1) stating that the Company is not in default under any of the provisions of this Lease Agreement, (2) giving an adequate legal description of that portion (together with the interest in such portion) of the Project Site to be released, (3) stating the purpose for which the parties hereto desire the release, and (4) requesting such release;

(c) A resolution of the governing body of the Issuer approving said amendment to this Lease Agreement and stating that the Issuer is not in default under any of the provisions of this Lease Agreement or the Indenture;

(d) A certificate of an independent engineer, dated not more than 60 days prior to the date of the release and stating that, in the opinion of the person signing such certificate, (1) the portion of the Project Site so proposed to be released is not needed for the operation of the Project for its intended purposes, and

(2) the release so proposed to be made will not impair the usefulness of the Project for its intended purposes and will not destroy the means of ingress thereto and egress therefrom; and

(e) A sum equal to the appraised value of said land as determined by an appraisal made by an appraiser who is a member of The American Institute of Real Estate Appraisers, which amount shall be deposited by the Trustee in the Bond Fund and shall be used for the redemption of Series 2005A Bonds on the earliest possible redemption date or to pay principal of any Series 2005A Bonds as the same becomes due and payable (or to reimburse the Bank for draws on the Letter of Credit applied to redeem or pay Series 2005A Bonds) until no Series 2005A Bonds remain outstanding and then to redemption or payment of Series 2005B Bonds.

If all of the conditions of this Section are met, the Issuer and the Trustee are authorized to release any such property from this Lease Agreement, and the Issuer is authorized to release any such property from the pledge of the Ordinance. No release effected under the provision of this Section shall, except to the extent provided in subsection (e) hereof, entitle the Company to any abatement or diminution of the Lease Payments payable under **Section 4.3** hereof, nor shall any such release in any other way whatsoever affect this Lease Agreement or the Indenture with respect to the remaining parts of the Project, and all the terms and provisions of this Lease Agreement and the Indenture shall remain in full force and effect with respect to the remaining part of the Project as though no such release had been effected.

Section 6.16. Removal of Project Equipment. The Company shall have the right, provided the Company is not in default in the payment of Lease Payments, to remove from the Project and (on behalf of the Issuer) sell, exchange or otherwise dispose of, without responsibility or accountability to the Issuer or the Trustee with respect thereto, any items of machinery and equipment which constitute a part of the Project and which have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary or which, in the sound discretion of the Company, are otherwise no longer useful to the Company in its operations conducted on the Project Site; provided that, the Company shall, for so long as the Series 2005A Bonds are Outstanding:

(a) Prior to any such removal, deliver to the Trustee a certificate signed by the Company (1) containing a complete description, including the make, model and serial numbers, if any, of any machinery or equipment constituting a part of the Project equipment which it proposes to remove from the Project Site, (2) stating the reason for such removal, (3) stating what disposition of the machinery or equipment is to be made by the Company after such removal and the names of the party or parties to whom such disposition is to be made and the consideration to be received by the Company therefor, if any, and (4) setting forth the proposed sale price (or trade-in credit to be received) and the fair market value (original cost of such machinery or equipment less depreciation at rates calculated in accordance with generally accepted accounting principles) of such machinery or equipment; and pay the greater of (A) the proceeds from the sale of such machinery or equipment (or trade-in credit received therefor) or (B) the fair market value of such machinery or equipment as set forth in said certificate to the Trustee for deposit in the Bond Fund; or

(b) Promptly replace any such Project equipment so removed with machinery and equipment of the same or a different kind but with a value equal to or greater than the fair market value of the Project equipment so removed, and such machinery and equipment shall be deemed a part of the Project equipment; within 30 days after any such replacement, deliver to the Trustee a certificate signed by the Company (1) setting forth a complete description, including make, model and serial numbers, if any, of the machinery and equipment which the Company has acquired to replace the Project equipment so removed by the Company, (2) stating the cost thereof, and (3) stating that the machinery and equipment described in said certificate are fully paid for and have been installed on the Site as a part of the Project.

All machinery and equipment which replaces Project equipment removed from the Project Site by the Company pursuant to paragraph (b) of this Section shall become and be deemed a part of the Project.

In all cases, the Company shall pay all the costs and expenses of any such removal and shall immediately repair at its expense any damage to the Project caused thereby. The Company’s rights under this Section to

remove from the Project machinery and equipment constituting a part of the Project equipment is intended only to permit the Company to maintain an efficient operation by the removal of machinery and equipment which is no longer suitable to the Company's use for any of the reasons set forth in this Section, and such right is not to be construed to permit a removal under any other circumstances and specifically is not to be construed to permit the Company to make a wholesale removal of the Project equipment.

Section 6.17. Additions to Project. The Company shall have and is hereby given the right, at its sole cost and expense, to construct on the Project Site or within areas occupied by the Project, or in airspace above the Project, such additional buildings and improvements as the Company from time to time may deem necessary or advisable. All additional buildings and improvements constructed by the Company pursuant to the authority of this Article shall, during the Lease Term, remain the property of the Company and may be added to, altered or razed and removed by the Company at any time during the Lease Term hereof. The Company covenants and agrees (a) to make any repairs and restorations required to repair any damage to the Project because of the construction of, addition to, alteration or removal of, said additional buildings or improvements, (b) to keep and maintain said additional buildings and improvements in good condition and repair, ordinary wear and tear excepted, and (c) to promptly and with due diligence either raze and remove from the Project Site, in a good, workmanlike manner, or repair, replace or restore such of said additional buildings or improvements as may from time to time be damaged by fire or other casualty, and (d) that all additional buildings and improvements constructed by the Company pursuant to this Section 6.17 which remain in place 90 days after the termination of this Lease Agreement for any cause other than the purchase of the Project pursuant to **Article X** hereof shall thereupon, subject to the Bank's rights therein granted pursuant to the Security Documents, become the separate and absolute property of Issuer; provided, however, the Company shall have the right, prior to or within **90** days after the termination of this Lease Agreement, to remove from or about the Project the buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures which the Company owns under the provisions of this Lease Agreement and are not a part of the Project.

Section 6.18. Gross Receipts and Compensating Tax. The Company, either on its own behalf or as agent for the Issuer pursuant to this section will file returns for reporting and paying compensating tax which is due because of the Project and promptly will pay, as a Cost of the Project, any gross receipts or compensating tax due from the Issuer under any such returns. To the extent consistent with State law, the Issuer, at the request of the Company, will deliver to the Company a sufficient number of type 9 Nontaxable Transaction Certificates for delivery to suppliers with respect to the construction, furnishing and equipping of the Project as may be applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company will promptly pay any gross receipts or compensating tax plus applicable penalty and interest which is found by the State Taxation and Revenue Department to be due from the Company or the Issuer because of the purchase or use of the Project or any component of the Project by the Company or the Issuer. The Company, at its sole expense, may request any rulings from the State Taxation and Revenue Department which the Company determines might be necessary or desirable to clarify the New Mexico gross receipts and compensating tax results of transactions related to the Project and may dispute, at its sole expense, in any manner authorized by the New Mexico Tax Administration Act, any gross receipts or compensating tax liability imposed on the Company or the Issuer because of the Project; provided that the Company will not pursue a dispute that, in the reasonable opinion of the Issuer, will materially and adversely affect the rights of the Issuer. The Issuer will, at the sole expense of the Company, join in any reasonable modifications to this Agreement which are necessary or desirable to obtain Nontaxable Transaction Certificates or otherwise reduce the gross receipts and compensating tax imposed on the Company or the Issuer as a result of or in connection with the Project or the Company's operations of the Project.

Section 6.19. Assessment in the Company's Name. If this Agreement has not been terminated on or before September 1, 2035, the Company will take all necessary action to have the Project assessed for property tax purposes in the name of the Company on or within 30 days after September 1, 2035 and the Company will pay all ad valorem taxes on the Project from and after said date. If the Project must be conveyed to the Company to accomplish such assessment, this Agreement will thereafter be construed to be an installment sale agreement and all terms and provisions of this Agreement will remain in full force and effect. The provisions of Article X

govern the manner and form of any such conveyance. Notwithstanding the foregoing, if the Company fails to take all necessary action to have the Project assessed for property tax purposes in the name of the Company thirty (30) days after September 1, 2035 the Issuer may execute, deliver and cause to be recorded, at the expense of the Company, a special warranty deed and bill of sale with respect to the Project.

Section 6.20. Payment in Lieu of Taxes.

(a) *Payments for the Benefit of the School District*. Beginning on the first business day in January 2006, and continuing to and including January 1, 2036, Company shall make annual payments to the Issuer for the benefit of the Albuquerque Public School District in the amount shown on *Exhibit C*. Each annual payment shall be paid on the first business day in January. The payment provisions of this Section 6.20(a) may be amended by the mutual agreement of the Company and the Issuer.

(b) *Payments for the Benefit of County Hospitals*. Beginning on the first business day in January 2006, and continuing and including January 1, 2036, Company shall make annual payments to the University of New Mexico Hospital in the amount shown on *Exhibit C*. Each annual payment shall be paid on the first business day in January. The payment provisions of this Section 6.20(b) may be amended by the mutual agreement of the Company and the Issuer

(c) *Payments to the Issuer*. If the Company terminates this Agreement within ten (10) years of the date hereof due to (i) ceasing operations, (ii) moving the manufacturing facility out of Bernalillo County, or (iii) any other voluntary act of the Company that results in the Project Property's use being discontinued, the Company shall pay to the Issuer an amount equal to the abated real property taxes less all amounts paid pursuant to paragraphs 6.20(a) and 6.20(b) hereof. The payment shall be made within 30 days of such discontinuance.

Section 6.21. *Employment Matters*. During the term of the Lease Agreement, the Company will provide annual reports to the County providing the number of full time employees, wage levels, benefits, duration of employment, job classification, number of new employees hired and their categories of employment and the residence of the employee. The reports shall be submitted on forms provided by County within 90 days of the close of the Company's fiscal year. The reports will be deemed to be public documents.

The Company shall, in accordance with Section 4-59-5(E) NMSA, (i) offer to its employees and their dependants health insurance coverage that is in compliance with the New Mexico Insurance Code (59A-1-1 NMSA 1978) and (ii) contribute not less than 50% of the premium for the health insurance for those employees who choose to enroll; provided that the 50% employer contribution shall not be a requirement for the dependant coverage that is offered.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1. Events of Default. The term **"event of default,"** wherever used in this Lease Agreement, means any one of the following events (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any Lease Payment when such payment becomes due and payable, whether by acceleration or otherwise; or

(b) default in the payment of the purchase price of tendered Bonds as required under Section 3.07 of the Indenture; or

(c) failure by the Company to observe or perform any agreement hereunder or on its part to be observed or performed, other than as referred to in subsection (a) or (b) of this Section, for a period of thirty

(30) days after written notice, specifying such failure and requesting that it be remedied, given to the Company and to the Bank by the Issuer or the Trustee, unless the Issuer and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Issuer and the Trustee will not unreasonably withhold their consent to an extension of such time if it is possible to correct such failure and corrective action is instituted by the Company or the Bank within the applicable period and diligently pursued until the failure is corrected; or in the case of any such default which can be cured with due diligence but not within such thirty-day period, the Company's or Bank's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence; or

(d) any representation by or on behalf of the Company contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement, the Indenture or the Credit Agreement proves false or misleading in any material respect as of the date of the making or furnishing thereof; or

(e) an "Event of Default" as defined in the Indenture, occurs and is continuing under the Indenture; and

(f) the Trustee receives a written notice from the Bank Administrative Agent that an "Event of Default" as defined in the Credit Agreement, has occurred and is continuing under the Credit Agreement;

provided, however, that the occurrence of an event described in Section 7.1(c) or (d) shall not constitute an "event of default" hereunder, without the prior written consent of the Bank.

The Company and the Issuer hereby authorize the Bank and the Bank Administrative Agent to do any and all things necessary to correct any default described in paragraph (c) above on behalf of the Company.

The foregoing provisions of subsection (c) of this Section are subject to the following limitations: If by reason of force majeure, the Company is unable in whole or in part to carry out the agreements on its part therein referred to, the failure to perform such agreements due to such inability shall not constitute an event of default nor shall it become an event of default upon appropriate notification to the Company or the passage of the stated period of time. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; acts of terrorism; orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company. The Company agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Company from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Company, and the Company shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Company, unfavorable to the Company.

Section 7.2. *Remedies*. Whenever an Event of Default shall have happened and be continuing, the Trustee, as the assignee and pledgee of the Issuer under the Indenture, shall take any one or more of the following remedial steps:

(a) The Trustee may declare all Lease Payments required to be made under Section 4.3 to be immediately due and payable, whereupon the same shall become immediately due and payable. If the Trustee elects to exercise the remedy afforded in this subsection (a) and accelerates all Lease Payments required to be made under Section 4.3, the amount then due and payable by the Company as accelerated payments shall be the sum of (i) the aggregate principal amount of the outstanding Bonds, (ii) all interest on the Bonds then due and to become due to the date of payment of the principal of the Bonds, and (iii) all other amounts due and payable to the Issuer, if any, to the Bondholders or to the Trustee with respect to the payment of the Bonds, including Counsel fees actually incurred.

(b) Subject to the provisions of Section 7.5 hereof, the Trustee may take whatever action at law or in equity may appear necessary or desirable to collect any sums then due and thereafter to become due hereunder or to enforce performance and the observance of any agreement of the Company hereunder.

(c) The Trustee may exercise any remedies provided under the Indenture. Any amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture and after Payment in Full of the Bonds and the payment of any costs occasioned by an Event of Default hereunder, any excess moneys in the Bond Fund shall be returned to the Company.

The Company hereby authorizes the Trustee to draw moneys under the Letter of Credit in accordance with the Indenture upon a declaration of acceleration of payment of the Series 2005A Bonds in an amount equal to (i) the aggregate principal amount of all outstanding Series 2005A Bonds and (ii) all interest on the Series 2005A Bonds due and to become due to the date of payment. The obligation of the Company to accelerate payment of all Lease Payments required to be made by the Company pursuant to Section 4.3 upon a declaration of acceleration of payment of the Series 2005A Bonds shall be deemed satisfied and discharged by a corresponding drawing and payment under the Letter of Credit.

Section 7.3. No Remedies Exclusive. Subject to the provisions of Section 7.5, no remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. The Trustee and the holders of the Bonds, subject to the provisions of the Indenture, shall be entitled to the benefit of all agreements herein contained.

Section 7.4. Agreement to Pay Counsel Fees and Expenses. If there should occur a default or an event of default hereunder and the Trustee or the Issuer should employ Counsel or incur other expenses for the collection of sums due hereunder or the enforcement of performance or observance of any agreement on the part of the Company herein contained, the Company agrees that it will on demand therefor pay to the Trustee or the Issuer the reasonable fee of such Counsel and such other reasonable expenses so incurred by the Trustee or the Issuer.

If the Company should fail to make any payments required in this Section, such item shall continue as an obligation of the Company until the same shall have been paid in full, with interest thereon from the date such payment was due at the rate per annum borne by the Bonds until paid in full.

Section 7.5. Waiver of Events of Default and Rescission of Acceleration. If, in compliance with the requirements of Section 8.10 of the Indenture, the Trustee shall waive any Event of Default as therein defined with the written consent of the Bank and its consequences or rescind any declaration of acceleration of payments of the principal of and interest on the Bonds, such waiver shall also waive any Event of Default hereunder and its consequences and such rescission of a declaration of acceleration of the principal of and interest on the Bonds shall also rescind any declaration of any acceleration of all payments required to be made under Section 4.3. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Company, the Trustee, the Bank and the holders of the Bonds shall be restored to their former positions and rights hereunder, but no such waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

ARTICLE VIII

SUPPLEMENTAL LEASE AGREEMENTS

Section 8.1. Supplemental Lease Agreements without Consent of Bondowners. Without the consent of the owners of any Bonds, but with the written consent of the Bank (if a Letter of Credit is in effect), the Issuer and the Company may from time to time enter into one or more Supplemental Lease Agreements, for any of the following purposes:

(a) to more precisely identify any project financed or refinanced out of the proceeds of the Bonds, or to substitute or add additional property thereto; or

(b) to add to the conditions, limitations and restrictions on the authorized amount, terms or purposes of the Lease, as herein set forth, additional conditions, limitations and restrictions thereafter to be observed; or

(c) to evidence the succession of another entity to the Company and the assumption by any such successor of the covenants of the Company herein contained; or

(d) to add to the covenants of the Company or to the rights, powers and remedies of the Trustee for the benefit of the owners of all Bonds or to surrender any right or power herein conferred upon the Company; or

(e) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or to make any other changes, with respect to matters or questions arising under this Lease Agreement, provided such action shall not adversely affect the interests of the owners of the Bonds.

Section 8.2. Supplemental Lease Agreements with Consent of Bondowners. With the written consent of the Bank and the owners of not less than a majority in principal amount of each of the Series 2005A Bonds and the Series 2005B Bonds then Outstanding, the Issuer and the Company may enter into Supplemental Lease Agreements for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Lease Agreement or of modifying in any manner the rights of the Trustee and the owners of the Bonds under this Lease Agreement; provided, however, that no such Supplemental Lease Agreement shall, without the written consent of the Bank and the owner of each Outstanding Bond affected thereby,

(a) change the dates that Lease Payments are due, or reduce the amounts of Lease Payments or the coin or currency in which, the Lease Payments are payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity thereof (or, in the case of redemption, on or after the redemption date); or

(b) reduce the percentage in principal amount of the Outstanding Bonds, the consent of whose owners is required for any such Supplemental Lease Agreement, or the consent of whose owners is required for any waiver provided for in this Lease Agreement of compliance with certain provisions of this Lease Agreement or certain defaults hereunder and their consequences; or

(c) modify any of the provisions of this Section, except to increase any percentage provided thereby or to provide that certain other provisions of this Lease Agreement cannot be modified or waived without the consent of the owner of each Bond affected thereby.

It shall not be necessary for the required percentage of owners of Bonds under this Section to approve the particular form of any proposed Supplemental Lease Agreement, but it shall be sufficient if such act shall approve the substance thereof.

Section 8.3. Execution of Supplemental Lease Agreements. In executing or consenting to any Supplemental Lease Agreement permitted by this Article, the Issuer and the Trustee shall receive, and shall be fully protected in relying upon, an Opinion of Bond Counsel addressed to the Trustee and the Issuer stating that

the execution of such Supplemental Lease Agreement is authorized or permitted by this Lease Agreement. The Trustee may, but shall not be obligated to, consent to any such Supplemental Lease Agreement which affects the Trustee's own rights, duties or immunities under this Lease Agreement or otherwise.

Section 8.4. Effect of Supplemental Lease Agreements. Upon the execution of any Supplemental Lease Agreement under this Article, this Lease Agreement shall be modified in accordance therewith and such Supplemental Lease Agreement shall form a part of this Lease Agreement for all purposes; and the Company, the Issuer, the Trustee and every owner of Bonds theretofore or thereafter authenticated and delivered under the Indenture shall be bound thereby.

Section 8.5. Reference in Bonds to Supplemental Lease Agreements. Bonds authenticated and delivered after the execution of any Supplemental Lease Agreement pursuant to this Article may, and if required by the Issuer shall, bear a notation in form approved by the Trustee as to any matter provided for in such Supplemental Lease Agreement. If the Issuer shall so determine, new Bonds so modified as to conform, in the opinion of the Issuer, to any such Supplemental Lease Agreement may be prepared and executed by the Issuer and authenticated and delivered by the Trustee in exchange for Outstanding Bonds.

ARTICLE IX

PREPAYMENT AND ACCELERATION OF LEASE PAYMENTS

Section 9.1. Prepayment at the Option of the Company. Upon the exercise by the Company of its option to cause the Bonds or any portion thereof to be redeemed pursuant to **Section 3.01(a)** of the Indenture, the Company shall prepay Lease Payments in whole or in part at the times and at the prepayment prices sufficient to redeem all or a corresponding portion of the Bonds then Outstanding in accordance with said paragraph. At the written direction of the Company, such prepayments shall be applied to the redemption of the Bonds in whole or in part in accordance with said paragraph.

Section 9.2 Reserved

Section 9.3. Mandatory Prepayment Upon Certain Events. In the event the Bonds are subject to mandatory redemption for any reason described in **Section 301** of the Indenture, the Company shall (except to the extent Bonds are purchased in lieu of redemption as provided in paragraph (f) of **Section 301** of the Indenture) prepay Lease Payments in whole at the time and at the prepayment price sufficient to redeem all of the Bonds then Outstanding in accordance with **Section 3.01** of the Indenture. The Company will promptly notify the Issuer, the Bank (if a Letter of Credit is in effect) and the Trustee in writing of the occurrence and existence of any event or condition which could result in mandatory prepayment under this Section.

Section 9.4. Right to Prepay at Any Time. The Company shall have the option at any time to prepay all of the Lease Payments, additional payments required by Section 4.5 and other amounts it is required to pay under this Lease Agreement by paying to the Trustee all such sums as are sufficient to satisfy and discharge the Indenture and paying or making provision for the payment of all other sums payable hereunder.

Section 9.5. Notice of Prepayment. To exercise an option granted by **Section 9.1, 9.2** or **9.4** hereof, the Company shall give written notice to the Issuer and the Trustee which shall specify therein the date upon which a prepayment of Lease Payments will be made, which date shall be not less than **45** days from the date the notice is received by the Trustee, and which shall contain the written consent of the Bank if such prepayment is being paid in whole or in part from a draw on the Letter of Credit, and if such consent is otherwise required by the terms of the Indenture. In the Indenture, the Issuer has directed the Trustee to forthwith take all steps (other than the payment of the money required to redeem the Bonds) necessary under the applicable provisions of the Indenture to effect any redemption of the then Outstanding Bonds, in whole or in part.

Section 9.6. Precedence of this Article. The rights, options and obligations of the Company set forth in this Article may be exercised or shall be fulfilled, as the case may be, whether or not an event of default exists hereunder, provided that such event of default will not result in nonfulfillment of any condition to the exercise of any such right or option and provided further that no amounts payable pursuant to this Lease Agreement shall be prepaid in part during the continuance of an event of default described in **Section 7.1(a)** or **(b)** hereof.

ARTICLE X

OPTION TO PURCHASE THE PROJECT

Section 10.1. Option to Purchase the Project. The Company shall have, and is hereby granted, the option to purchase the Project at any time prior to the expiration of the Lease Term upon payment in full of all Bonds then Outstanding or provision for their payment having been made pursuant to **Article VII** of the Indenture. To exercise such option the Company (or the Bank, if acting on behalf of the Company after an event of default under the Credit Agreement) shall give written notice to the Issuer and to the Trustee, if any of the Bonds shall then be unpaid or provision for their payment shall not have been made in accordance with the provisions of the Indenture, and shall specify therein the date of closing such purchase, which date shall be not less than **45** nor more than **90** days from the date such notice is mailed. The purchase price payable by the Company in the event of its exercise of the option granted in this Section shall be the sum of the following:

(a) the full amount which is required to provide the Issuer and the Trustee with funds sufficient, in accordance with the terms of the Indenture, to pay at maturity or to redeem and pay in full (i) the principal of all of the Outstanding Bonds, or if the Bank so requires pursuant to the last sentence of this Section 10.1, the Series 2005A Bonds, (ii) all interest due on the Outstanding Bonds to the date of maturity or redemption, which ever first occurs, (iii) all costs, expenses and premiums incident to the redemption and payment of the Outstanding Bonds in full, or if the Bank so requires pursuant to the last sentence of this Section 10.1, the Series 2005A Bonds and (iv) any unpaid payment pursuant to Section 6.20 hereof;

(b) an amount of money equal to the Issuer's, Trustee's, and other professional fees and expenses under the Indenture and this Lease Agreement accrued and to accrue until such redemption of the Bonds;

(c) an amount of money equal to the Bank's fees and expenses under the Bank Documents; and

(d) the sum of $1.00.

Notwithstanding the foregoing, if there is a default under the Credit Agreement on the date of the closing of the purchase, the Bank shall have the right to require that the purchase price be calculated based upon the Series 2005A Bonds only, and not the Series 2005B Bonds, and that such purchase price be used solely to redeem or purchase the Series 2005A Bonds and not the Series 2005B Bonds on the date of the closing

Section 10.2. Conveyance of the Project and Site. At the closing of the purchase of the Project pursuant to this Article, the Issuer will deliver to the Company upon receipt of the purchase price the following:

(a) If the Indenture shall not at the time have been satisfied in full, a release from the Trustee of the Lease of the Project.

(b) A special warranty deed conveying to the Company fee simple title to the Project Site, and a bill of sale and assignment assigning and transferring to the Company title to the Project, as it then exists, and warranting title to both the Project and the Project Site to be free of all liens and encumbrances, subject to the following: (i) those liens and encumbrances, if any, to which title to the Project Site or the Project was subject when conveyed to the Issuer; (ii) those liens and encumbrances created by the Company or to the creation or suffering of which the Company has consented to in writing (other than the Lease and Indenture); (iii) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement; (iv) taxes and assessments, if any, and (v) if the Project is being condemned, the rights and title of any condemning authority.

Section 10.3. Relative Position of Option and Indenture. The option granted to the Company in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default under this Lease Agreement, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option and further provided that all options herein granted shall terminate upon the termination of this Lease Agreement.

Section 10.4. Mandatory Purchase of Project Property. The Company will purchase, and the Issuer will sell, the Project Property for $1.00 at the expiration or sooner termination of this Agreement and following the payment of the Bonds, but no later than September 1, 2035. The Company will give notice to the Issuer specifying the date of closing such purchase, which will not be less than 15 nor more than 90 days from the date of such notice. At the closing of such purchase, the Issuer will, upon receipt of the purchase price and all amounts due and payable to the Issuer hereunder, deliver to the Company a deed, bill of sale and other appropriate documents, all prepared by the Company, at the Company's expense, conveying to the Company title to the Project Property, as it exists at the time of such purchase, subject only to (i) those liens and encumbrances, if any, to which the Project Property was subject when conveyed to the Issuer, (ii) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform any of its obligations under this Agreement; (iv) Permitted Liens, other than the Indenture and this Agreement; and (v) any other lien arising as a matter of law. Such deed will be a quitclaim deed unless the Company provides to the Issuer not less than five days before the closing of a commitment for title insurance, title report, title search or other evidence of the state of title of the Project Property satisfactory to the Issuer, in which event the deed will be a special warranty deed. The Company may purchase the Project Property and exercise its other rights under this Section 10.4, whether or not an Event of Default has occurred and is continuing.

ARTICLE XI

TERM AND TERMINATION OF LEASE AGREEMENT

Section 11.1. Term of Lease Agreement. This Lease Agreement shall be effective concurrently with the initial issuance and delivery of the Bonds and shall continue in force and effect until the principal of, redemption premium, if any, and interest on all of the Bonds have been fully paid (or provision for their payment shall have been made in accordance with the Indenture), together with all sums to which the Issuer, the Bank (if a Letter of Credit is in effect) and the Trustee are entitled from the Company under this Lease Agreement and all reimbursement payments and other amounts payable by the Company to the Bank under the Credit Agreement with respect to the Letter of Credit and the other Bank Documents; provided, however, the provisions of Sections 4.5 and 6.2 related to payment of fees and indemnification of the Issuer, the Bank and the Trustee shall remain in full force and effect.

Section 11.2. Termination and Discharge of Lease Agreement. If the Company shall pay and discharge or provide for the payment or redemption and discharge of the whole amount of the principal of, redemption premium, if any, and interest on the Bonds at the time Outstanding as provided in the Indenture, or shall make arrangements satisfactory to the Issuer and the Trustee for such payment or redemption and discharge, and shall pay or cause to be paid all other sums payable under this Lease Agreement (including provision for indemnities to the Issuer, the Trustee and the owners of the Bonds) and under the Bank Documents, then all right, title and interest of the Issuer and the Trustee under this Lease Agreement shall thereupon cease, terminate and become void (except as provided in **Section 11.1** of this Lease Agreement), the Bonds shall cease to be entitled to any benefit under this Lease Agreement and the Credit Agreement, and all covenants, agreements and obligations of the Company to the Trustee and the owners of the Bonds shall thereupon cease, terminate and become void; provided that the owners of the Bonds shall be entitled to payment thereof at the times and in the manner stipulated therein and in the Indenture from the sources provided for such payment.

Section 11.3. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining upon expiration or earlier termination of this Lease Agreement in any account of the Project Fund and the Bond

Fund created under the Indenture relating to the Bonds upon expiration or earlier termination of this Lease Agreement and, after payment in full of such Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture), the fees and expenses of the Trustee in accordance with the Indenture and the fees and expenses of the Issuer in accordance with this Lease Agreement, shall be paid to the Bank (to the extent the Bank certifies to the Trustee that the Company is indebted to it on account of a draw on the Letter of Credit or otherwise under the Credit Agreement and the other Bank Documents) and then shall belong to and be paid to the Company by the Trustee; *provided, however*, moneys drawn on the Letter of Credit shall be paid to the Bank or as otherwise provided in the Indenture, and not to the Company.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.1. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Lease Agreement to be given to or filed with the Issuer, the Trustee, the Bank, the Company or the owners of the Bonds if the same is given or filed in the manner and at the addresses specified in the Indenture.

A duplicate copy of each notice, certificate or other communication given hereunder by the Issuer or the Company shall also be given to the Trustee and the Bank. The Issuer, the Company, the Trustee, and the Bank may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 12.2. Further Assurances. The Company will do, execute, acknowledge and deliver such further acts, instruments, financing statements and assurances as the Trustee may reasonably require for accomplishing the purposes of the Indenture and this Lease Agreement.

Section 12.3. Payments Due on Saturdays, Sundays and Holidays. If the day for any payment due under this Lease Agreement is not a Business Day, then such payment may be made on the next succeeding Business Day without additional interest and with the same force and effect as if made on the specified date for payment.

Section 12.4. Issuer's Obligations Limited. Any other term or provision in this Lease Agreement or in any other documents executed in connection with the issuance of the Bonds or elsewhere to the contrary notwithstanding:

(a) Any and all obligations (including without limitation, fees, claims, demands, payments, damages, liabilities, penalties, assessments and the like of or imposed upon the Issuer or its members, officers, agents, employees, representatives, advisors or assigns, whether under this Lease Agreement or any of the documents executed in connection with the issuance of the Bonds or elsewhere and whether arising out of or based upon a claim or claims of tort, contract, misrepresentation, or any other or additional legal theory or theories whatsoever (collectively the "Obligations"), shall in all events be absolutely limited obligations and liabilities, payable solely out of the following, if any, available at the time one of the Obligations in question is asserted:

(1) Bond proceeds and investment earnings therefrom; and

(2) Payments derived from the Bonds, the Letter of Credit (insofar as payment of principal and purchase price of, and interest on, the Series 2005A Bonds is concerned), the Indenture (including the Trust Estate to the extent provided in the Indenture) and this Lease Agreement (except for the fees and expenses of the Issuer and the Issuer's right to indemnification under this Lease Agreement under certain circumstances and as otherwise expressly set forth therein);

(the above provisions (1) and (2) being collectively referred to as the "exclusive sources of the Obligations").

(b) The Obligations shall not be deemed to constitute a debt or liability of the State or of any political subdivision thereof within the meaning of any state constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the State or of any political subdivision thereof, but shall be payable solely from and out of the exclusive sources of the Obligations and shall otherwise impose no liability whatsoever, primary or otherwise, upon the State or any political subdivision thereof or any charge upon their general credit or taxing power.

In no event shall any member, officer, agent, employee, representative or advisor of the Issuer, or any successor or assign of any such person or entity, be liable, personally or otherwise, for any Obligation.

(c) In no event shall this Lease Agreement be construed as:

(1) depriving the Issuer of any right or privilege; or

(2) requiring the Issuer or any member, officer, agent, employee, representative or advisor of the Issuer to take or omit to take, or to permit or suffer the taking of, any action by itself or by anyone else; which deprivation or requirement would violate or result in the Issuer being in violation of the Industrial Revenue Bond Act or any other applicable state or federal law.

Section 12.5. Immunity of Officers, Employees and Directors of the Issuer and the Company. No recourse shall be had for the payment of Lease Payments or other amounts payable under this Lease Agreement or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Lease Agreement contained against any past, present or future officer, member, trustee, director, limited partner, stockholder, employee or agent of the Issuer or the Company, or, respectively, of any successor public or private corporation thereto, either directly or through the Issuer, the Company, or respectively, any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, trustees, directors, limited partners, stockholders, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Lease Agreement; it being expressly agreed and understood that the Bonds, the Indenture and this Lease Agreement are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any director, limited partner, trustee, member, officer, employee or agent, as such, past, present or future, of the Issuer or the Company or of any successor entity, either directly or through the Issuer or the Company or any successor entity, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Company whether contained in this Lease Agreement or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, limited partner, trustee, member, officer, employee or agent is, by the execution of this Lease Agreement and the Indenture, and as a condition of, and as part of the consideration for, the execution of this Lease Agreement and the Indenture, expressly waived and released.

Section 12.6. Net Lease. The parties hereto agree (a) that this Lease Agreement shall be deemed and construed to be a “net lease”, (b) that the payments of Lease Payments are designed to provide the Issuer and the Trustee with moneys adequate in amount to pay all principal and purchase price of, redemption premium, if any, and interest accruing on the Bonds as the same become due and payable, (c) that to the extent that the payments of Lease Payments are not sufficient to provide the Issuer and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Payments, such further moneys, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of, redemption premium, if any, and interest on the Bonds and all costs incident to the payment of the Bonds have been paid in full the Trustee or the Issuer holds unexpended funds received in accordance with the terms hereof, such unexpended funds shall, after payment therefrom of all sums then due and owing by the Company under the terms of this Lease Agreement and the Bank Documents, be distributed in accordance with the Indenture.

Section 12.7. Benefit of Lease Agreement. This Lease Agreement shall inure to the benefit of and be binding upon the Issuer, the Company, the Trustee, the owners of the Bonds and, if the Letter of Credit is in

effect, the Bank, and their respective successors and assigns. In the event of any conflict between the provisions of this Lease Agreement and the Credit Agreement, the provisions of the Credit Agreement shall prevail. Nothing in this Lease Agreement or in the Indenture or the Bonds, express or implied, shall give to any Person, other than the parties hereto, the Trustee and the Bank and their successors and assigns and the owners of the Outstanding Bonds, any benefit or any legal or equitable right, remedy or claim under this Lease Agreement.

Section 12.8. Severability. If any provision in this Lease Agreement, the Indenture or the Bonds shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.9. Amendments, Changes and Modifications. Except as otherwise provided herein or in the Indenture, subsequent to the date of issuance and delivery of the Bonds and prior to their payment in full, this Lease Agreement may not be effectively amended or terminated without the written consent of the Company and the Bank. This Lease Agreement may be modified, altered, amended or supplemented in accordance with the Indenture in order to obtain a rating of the Series 2005A Bonds by the Rating Agency.

Section 12.10. Counterparts. This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 12.11. Governing Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the Issuer and Company have caused this Lease Agreement to be executed by their duly authorized officers, as of the day and year first above written.

BERNALILLO COUNTY, NEW MEXICO

By: /s/ ALAN B. ARMIJO
Title: **Chair, Board of County Commissioners**

ATTEST:

By: /s/ DIANNE BROWN FOR MARY HERRERA
County Clerk

TEMPUR PRODUCTION USA, INC.

By: /s/ WILLILAM H. POCHE
William H. Poche
Assistant Treasurer

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss:
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on October 21, 2005, by Alan B. Armijo, Chairman of the Board of Commissioners of Bernalillo County, New Mexico for and on behalf of said County.

[SEAL]

/s/ MARLO TORRES
Notary Public

My Commission Expires:
January 30, 2007

Marlo Torres
Typed or Printed Name of Notary Public

ACKNOWLEDGMENT

STATE OF NEW KENTUCKY)
) ss:
COUNTY OF FAYETTE)

This instrument was acknowledged before me on October 25th, 2005, by William H. Poche, Assistant Treasurer of Tempur Production USA, Inc., a Virginia corporation, for and on behalf of said corporation.

[SEAL]

/s/ CJ LOUALLEN
Notary Public

My Commission Expires:
4/21/2006

CJ Louallen
Typed or Printed Name of Notary Public

BOND PURCHASE AGREEMENT

Bernalillo County, New Mexico
Taxable Variable Rate Industrial Revenue Bonds
(Tempur Production USA, Inc. Project) Series 2005A

October 26, 2005

Bernalillo County, New Mexico
One Civic Plaza NW
Albuquerque, New Mexico 87102

Tempur Production USA, Inc.
1713 Jaggie Fox Way
Lexington, Kentucky 40511

Ladies and Gentlemen:

Banc of America Securities LLC (the "Underwriter") hereby offers to enter into this Bond Purchase Agreement (this "Bond Purchase Agreement") with Bernalillo County, New Mexico, a political subdivision of the State of New Mexico (the "Issuer"), and Tempur Production USA, Inc., a Virginia corporation (the "Company"). The offer is hereby made subject to acceptance by the Issuer and the Company (by the execution and delivery of this Bond Purchase Agreement to the Underwriter) on or before 6:00 p.m. New York, New York time, on October 26, 2005, and upon such acceptance this Bond Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the Issuer, the Company and the Underwriter.

The Company is entering into this Bond Purchase Agreement to induce the Issuer to sell and the Underwriter to purchase $53,925,000 initial aggregate principal amount of the Bernalillo County, New Mexico Taxable Variable Rate Industrial Revenue Bonds (Tempur Production USA, Inc. Project) Series 2005A (the "Initial Series 2005A Bonds"), on the terms set forth herein. The Company, by its acceptance hereof, requests that the Issuer issue and the Underwriter purchase the Initial Series 2005A Bonds.

The Initial Series 2005A Bonds will be issued pursuant to the provisions of a Trust Indenture, dated as of September 1, 2005 (the "Indenture"), by and between the Issuer and The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), in order (i) to finance the acquisition and construction of a manufacturing facility (the "Project") to be leased by the Issuer to the Company pursuant to the provisions of a Lease Agreement dated as of September 1, 2005 (the "Lease Agreement") between the Issuer and the Company and used by the Company in the manufacture of mattresses and neck pillows and (ii) to pay certain costs of issuing the Bonds (as hereinafter defined).

Contemporaneously with the issuance of the Initial Series 2005A Bonds, Bank of America, N.A. (the "Bank") will issue its irrevocable Letter of Credit (the "Letter of Credit") in favor of the Trustee, for the account of the Company, obligating the Bank to pay to the Trustee, in accordance with the terms thereof, upon presentation of drafts and certificates as required therein, certain amounts specified therein for payment of the principal or purchase price of and interest on the Initial Series 2005A Bonds.

The Indenture permits the issuance by the Issuer of additional Taxable Variable Rate Industrial Revenue Bonds (Tempur Production USA, Inc. Project) Series 2005A (the "Additional Series 2005A Bonds") from time to time bearing interest at the same rates and repayable on the same dates as the Initial Series 2005A Bonds and otherwise on a parity with the Initial Series 2005A Bonds as to security and right to payment from draws on the Letter of Credit, as amended in connection with the issuance of such Additional Series 2005A Bonds (the Initial

Series 2005A Bonds and any Additional Series 2005A Bonds sold pursuant to the terms hereof being hereinafter referred to together as the "Series 2005A Bonds") to finance additional costs of the Project leased to the Company and costs of issuance of the Bonds, provided that the aggregate principal amount of the Series 2005A Bonds that may be issued under the Indenture shall not exceed $75,000,000 (the "Maximum Permitted Amount").

The parties hereto desire to specify the terms and conditions applicable to the purchase and sale of the Initial Series 2005A Bonds on their date of issuance (the "Date of Issuance" or "Initial Closing Date") and any Additional Series 2005A Bonds on their respective dates of issuance (each such date being hereinafter referred to as a "Closing Date").

The Series 2005A Bonds are more fully described in the Official Statement dated October 21, 2005 (the "Official Statement") prepared in connection with the initial issuance and sale of the Series 2005A Bonds.

The Indenture also permits the issuance from time to time by the Issuer of the Issuer's Taxable Fixed Rate Unsecured Industrial Revenue Bonds (Tempur Production USA, Inc. Project) Series 2005B (the "Series 2005B Bonds" and, together with the Series 2005A Bonds, the "Bonds"). The Series 2005B Bonds (i) will not be purchased by the Underwriter, but instead will be issued and sold by the Issuer directly to Tempur World, LLC, an affiliate of the Company (the "Series 2005B Bond Purchaser"), for investment for its own account pursuant to a Bond Purchase Agreement dated as of the date hereof (the "Series 2005B Purchase Agreement") among the Issuer, the Company and the Series 2005B Bond Purchaser, and (ii) will not be secured by the Letter of Credit.

Section 1. ***Definitions*****.** All capitalized terms used herein and not otherwise herein defined shall have the meanings ascribed to them in the Indenture.

Section 2. ***Agreement to Purchase; Purchase Price; Closing Dates*****.**

(a) The Underwriter hereby agrees to purchase all (but not less than all) of the Initial Series 2005A Bonds at an aggregate purchase price of $53,925,000, which reflects the par amount of the Initial Series 2005A Bonds. At or before 12:00 p.m., New York, New York time, on October 27, 2005 (the "Initial Closing Date"), or at such other time or on such later date as the Underwriter, the Company and the Issuer mutually agree upon, the Issuer will deliver or cause to be delivered to the Underwriter the Initial Series 2005A Bonds, and the Underwriter will accept such delivery and transfer to the Trustee, for the account of the Issuer, the purchase price of the Initial Series 2005A Bonds in immediately available funds. Delivery and payment shall be made simultaneously at such place as the Underwriter, the Company and the Issuer mutually agree upon.

(b) Subject to the terms and conditions contained in the Indenture and herein, at any time and from time to time, upon receipt by the Underwriter of a written request in the form of *Exhibit A* hereto from the Company to the Issuer to issue and sell, and to the Underwriter to purchase, Additional Series 2005A Bonds in the principal amount specified in such request (which shall be in a minimum amount of $5,000,000 or any integral multiple of $5,000 in excess thereof) at least 30 days before the applicable Closing Date specified therein (which, unless the Underwriter otherwise agrees, shall be (i) the first day of a month which is a Business Day on which the Additional Series 2005A Bonds specified in such request shall bear interest at the Weekly Rate and (ii) not later than May 1, 2007), together with evidence satisfactory to the Underwriter that the stated amount of the Letter of Credit (or any Substitute Letter of Credit subsequently substituted therefor) to be in effect on the applicable Closing Date (whether by virtue of an amendment or supplement thereto or otherwise) will be not less than the aggregate principal amount of all Series 2005A Bonds that will be outstanding on such Closing Date bearing interest at the Weekly Rate plus 35 days of interest thereon at the Maximum Rate calculated on the basis of a 365 day year and that the other conditions to the issuance of such Additional Series 2005A Bonds set forth in the Indenture have been satisfied, the Underwriter shall purchase all of such Additional Series 2005A Bonds at a price equal to 100% of the principal amount thereof. The obligation of the Underwriter to purchase the Additional Series 2005A Bonds on each Closing Date is subject to (i) receipt by the Underwriter of: (A) satisfactory approving Opinions of counsel to the Bank and the Company and confirmation that the Opinion

of Bond Counsel delivered on the Initial Closing Date and attached as an appendix to the Official Statement has not been withdrawn or amended, restated or otherwise changed in form or substance as to the Additional Series 2005A Bonds in a manner that would adversely affect the marketing of the Additional Series 2005A Bonds as determined by the Underwriter in the exercise of its reasonable discretion; (B) a letter from any Rating Agency reaffirming its then rating on all outstanding Series 2005A Bonds as also applicable to the Additional Series 2005A Bonds or, if such rating initially applies to all Series 2005A Bonds to be issued, such rating shall not have been reduced or withdrawn; and (C) such other documents, instruments, approvals and opinions as the Underwriter may reasonably request; (ii) satisfaction of the other conditions specified in the Indenture; (iii) receipt by the Underwriter of evidence satisfactory to it (which may take the form of certificates signed by duly authorized officers of the Issuer and the Company) that (A) the representations of the Issuer contained in Section 5 of this Bond Purchase Agreement and the representations of the Company contained in Section 6 of this Bond Purchase Agreement remain true and correct on each Closing Date as though made on and as of such Closing Date with respect to all Series 2005A Bonds to be outstanding on such Closing Date, and (B) no event referred to in Section 9 hereof or Section 3(c) of the Remarketing and Interest Services Agreement dated as of September 1, 2005 (the "Remarketing Agreement"), between the Company and Banc of America Securities LLC, as Remarketing Agent, has occurred and is continuing; and (iv) the contemporaneous purchase by the Series 2005B Bond Purchaser of such aggregate principal amount of Series 2005B Bonds as is required by the Bank.

(c) The Initial Series 2005A Bonds and any Additional Series 2005A Bonds subsequently purchased hereunder will bear interest, be subject to optional and mandatory redemption and have optional and mandatory tender features as provided in the Indenture. The Initial Series 2005A Bonds and any Additional Series 2005A Bonds subsequently purchased hereunder will be sold to the Underwriter under the exemption set forth in Rule 15c2-12(d) of the Securities and Exchange Commission.

(d) The Initial Series 2005A Bonds and any Additional Series 2005A Bonds subsequently purchased hereunder shall be in fully registered form, registered in such names as the Underwriter shall submit to the Trustee prior to each Closing Date and shall be in denominations of One Hundred Thousand Dollars ($100,000) or any integral multiple of $5,000 in excess thereof, except as otherwise provided in the Indenture. The Initial Series 2005A Bonds and any Additional Series 2005A Bonds subsequently purchased hereunder shall be made available to the Underwriter for review at least one (1) business day prior to each Closing Date. Notwithstanding the foregoing and any other references in this Bond Purchase Agreement to delivery of Series 2005A Bonds, or similar statements, the Series 2005A Bonds will be registered with Cede & Co. as nominee of The Depository Trust Company ("DTC") under the DTC system and the DTC procedures will be followed and take precedence over any conflicting procedures or provisions.

(e) The Series 2005A Bonds will be sold to the Underwriter on the Initial Closing Date and each subsequent Closing Date under the exemption set forth in Section 3(a)(2) of the Securities Act of 1933, as amended (the "1933 Act").

Section 3. ***Official Statement.***

(a) The Company shall deliver or cause to be delivered to the Underwriter, promptly after acceptance hereof and prior to the Initial Closing Date, copies of the Official Statement relating to the Series 2005A Bonds that has been approved for distribution by the Issuer and the Company. The parties hereby acknowledge that there will be prepared and distributed only a single Official Statement for the Series 2005A Bonds. If between the date of this Bond Purchase Agreement and the date which is one hundred twenty (120) days following the final Closing Date, any event shall occur which might or would cause the Official Statement to contain any untrue statement of material fact or to omit to state any material fact necessary to make statements therein, in light of the circumstances under which they were made, not misleading, the Company shall notify the Underwriter and the Issuer, and if, in the opinion of the Underwriter or the Issuer, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Company will supplement or amend the Official Statement in a form and in a manner approved by the Underwriter and the Issuer. If the Official Statement is so supplemented or amended prior to any proposed Closing Date, such approval by the Underwriter and the Issuer

of a supplement or amendment to the Official Statement shall not preclude the Underwriter from thereafter terminating this Bond Purchase Agreement if, in the reasonable judgment of the Underwriter, such amendment or supplement has had or will have a material adverse effect on the marketability of any Series 2005A Bonds to be issued on such proposed Closing Date.

(b) The Issuer and the Company hereby ratify, approve and authorize the use by the Underwriter, prior to and after the date hereof, in connection with the offer and sale of the Series 2005A Bonds, of the Official Statement. The Underwriter agrees that it will not confirm the sale of any Series 2005A Bonds unless the settlement of such sale is accompanied by or preceded by the delivery of a copy of the final Official Statement.

Section 4. ***Fees and Expenses*****.**

(a) In lieu of a discount on the Series 2005A Bonds, the Company agrees to pay the Underwriter a one-time underwriting fee of $187,500 in immediately available funds on the Initial Closing Date in consideration for its commitments and services hereunder, which fee shall be deemed earned in full upon receipt by the Underwriter and no portion of which shall be refundable for any reason, including, without limitation, a determination by the Issuer or the Company not to issue any or all of the Additional Series 2005A Bonds.

(b) The Company also agrees to pay to the Underwriter all reasonable out-of-pocket costs and expenses of the Underwriter incurred in connection with the issuance and sale of the Series 2005A Bonds and the preparation, execution, delivery and enforcement of this Bond Purchase Agreement, the Official Statement, the Indenture, the Lease Agreement, the Bonds and any other documents contemplated to be delivered in connection herewith or therewith, including, without limitation, the reasonable fees and expenses of counsel to the Underwriter ("Underwriter's Counsel"), and, in accordance therewith, the Company shall pay a one-time administrative fee estimated at $8,000 in immediately available funds on the Initial Closing Date to cover such out-of-pocket costs and expenses (exclusive of fees and expenses of Underwriter's Counsel) through the Initial Closing Date.

(c) The Company shall also pay all other fees and expenses incurred in connection with the issuance and sale of the Bonds and the preparation, execution, delivery and enforcement of this Bond Purchase Agreement, the Series 2005B Purchase Agreement, the Official Statement, the Indenture, the Lease Agreement, the Bonds and any other document that may be delivered in connection herewith or therewith, including, but not limited to, (i) the reasonable fees and expenses of Bond Counsel, counsel for the Bank, counsel for the Company, counsel for the Trustee and the Fiscal Agent and counsel for the Issuer, (ii) the reasonable fees and expenses of the Issuer, the Trustee and the Fiscal Agent, (iii) the cost of printing, photocopying and delivering the Bonds and the Official Statement, (iv) all Rating Agency fees and (v) the fees and expenses of the Bank specified in the Credit Agreement.

(d) The fees and expenses described in paragraphs (b) and (c) above shall be paid by the Company whether or not the Series 2005A Bonds are issued or sold, unless the Underwriter is in default in its obligation to purchase the Series 2005A Bonds hereunder, in which case the Company shall have no obligation to pay the fees and expenses of the Underwriter or Underwriter's Counsel. All fees and expenses described in this Section 4, to the extent they are identifiable and billed, shall be paid on the Date of Issuance and each subsequent Closing Date, and the remainder shall be paid promptly upon receipt of statements therefor. The obligations of the Company under this Section 4 shall survive the issuance and maturity of the Series 2005A Bonds and any termination of this Bond Purchase Agreement.

(e) Whether or not the sale of the Series 2005A Bonds by the Issuer to the Underwriter is consummated, the Underwriter shall be under no obligation to pay any costs or expenses incident to the performance of the obligations of the Issuer or the Company hereunder.

(f) In the event that, for any reason (other than a failure by the Underwriter to comply with any of its obligations hereunder), the Issuer fails to deliver the Initial Series 2005A Bonds or any Additional Series 2005A Bonds as provided herein by 12:00 p.m., New York, New York time, on the Initial Closing Date or any subsequent Closing Date, as applicable, the Company will pay to the Underwriter any losses resulting from the

Underwriter being required to hold Series 2005A Bonds prior to delivery to ultimate purchasers thereof. This preceding sentence shall not be construed as a waiver of any condition to the Underwriter's obligations under this Bond Purchase Agreement.

Section 5. ***Representations and Agreements of the Issuer*****.** The Issuer represents to, and agrees with, the Company and the Underwriter that:

(a) Each of the representations of the Issuer contained in the most recent drafts of the Lease Agreement and the Indenture furnished to the Underwriter on or before the date hereof will be true and correct on and as of the Date of Issuance and are hereby made to the Underwriter as if set forth herein.

(b) The Issuer is a political subdivision of the State of New Mexico, with all necessary power and authority to issue the Bonds and to enter into the Lease Agreement for the purpose of promoting and encouraging commerce and industry, and generally to foster economic development in the State of New Mexico; to enter into the Indenture and this Bond Purchase Agreement and the Series 2005B Purchase Agreement; to issue, sell and deliver the Bonds as provided herein; and to carry out and consummate all other transactions contemplated by each of the aforesaid documents.

(c) The Issuer has duly authorized the issuance of the Bonds and the execution and delivery of, and the performance of its obligations under, this Bond Purchase Agreement, the Series 2005B Purchase Agreement, the Lease Agreement and the Indenture; this Bond Purchase Agreement has been duly executed and delivered and, assuming the due authorization, execution and delivery by the other parties hereto, is a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and the application of general principles of equity; and the Bonds, when issued on the Initial Closing Date or any subsequent Closing Date, as applicable, will be duly authorized, executed, issued and delivered by the Issuer, and will constitute, legal, valid and binding limited obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and the application of general principles of equity.

(d) To the knowledge of the undersigned, without investigation, there is no action, suit or proceeding or investigation, at law or in equity, before or by any court, board or body or other governmental authority, pending or threatened against or affecting the Issuer, or any basis therefor, to restrain or enjoin the issuance or delivery of any of the Bonds or the collection, application or pledge of revenues pledged under the Indenture or in any way contesting or affecting the authority for the issuance of the Bonds or the validity or enforceability of the Bonds, the Indenture, the Lease Agreement, this Bond Purchase Agreement, the Series 2005B Purchase Agreement or any other document executed and delivered (or to be executed and delivered) in connection with the issuance of the Bonds and the other transactions contemplated hereby, to which the Issuer is or is to be a party (collectively, the "Issuer Documents"), or the power of the Issuer to execute and deliver such documents or to consummate the transactions contemplated therein or the existence or powers of the Issuer or the titles of its officers to their respective offices, or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby and in the Indenture or the Lease Agreement, or which in any way would adversely affect the validity of the Issuer Documents or the resolutions adopted in connection with the issuance of the Bonds.

(e) To the knowledge of the undersigned, without investigation, the execution, delivery and performance by the Issuer of the Issuer Documents do not and will not violate any order, injunction, ruling or decree by which the Issuer is bound, and do not and will not constitute a breach of or a default under any agreement, indenture, mortgage, lease, note or other obligation, instrument or arrangement to which the Issuer is a party or by which the Issuer or any of its property is bound, or contravene or constitute a violation of any federal or state constitutional or statutory provision, rule or regulation to which the Issuer or any of its property is subject, and no approval, consent or other action by, or filing or registration with, any governmental authority or agency is required in connection therewith that has not been obtained or accomplished.

(f) With respect to the information contained therein relating to the Issuer under the captions "THE ISSUER" and "LITIGATION—The Issuer", the Official Statement does not as of the Date of Issuance (and any amendment or supplement thereto as of each subsequent Closing Date shall not) contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Issuer has not participated in the preparation of the Official Statement and takes no responsibility for the accuracy of any of the information contained therein, except the statements relating to the Issuer therein under the captions "THE ISSUER" and "LITIGATION—The Issuer".

(g) Subject to the Issuer's disclaimer in Section 5(f) above, the Issuer acknowledges the use of the Official Statement by the Underwriter and the Remarketing Agent, respectively, in connection with the initial sale and remarketing, respectively, of the Series 2005A Bonds from time to time, but makes no representation as to its contents except as it relates to the Issuer as provided in Section 5(f).

(h) The Issuer shall cooperate with the Underwriter, at the expense of the Company, in taking all actions necessary for the qualification of the Series 2005A Bonds for sale (and the continuation of the effectiveness of such qualification so long as required for the distribution of the Series 2005A Bonds) and the determination of eligibility for investment of the Series 2005A Bonds under the laws of such jurisdictions as the Underwriter may request; provided, however, that the Issuer will not be required to qualify as a foreign corporation or file a consent to service of process in connection with any such qualification in any jurisdiction.

(i) The Issuer agrees that at the Company's cost the Underwriter may amend or supplement the Official Statement whenever, in the reasonable judgment of the Underwriter, such amendment or supplement is required in order to initially offer and sell any Additional Series 2005A Bonds in accordance with all applicable federal and state securities laws.

(j) Except as and to the extent the Underwriter and the Company receive express prior written notice in reasonable detail to the contrary, none of the foregoing representations of the Issuer is or will be false or misleading in any material respect on or as of any subsequent Closing Date.

Notwithstanding the foregoing, the liability of the Issuer under any such representations and agreements for any breach or default by the Issuer thereof or thereunder shall be limited solely to the rents, revenues and receipts derived by it from the Lease Agreement and pledged to the payment of the Bonds.

Section 6. ***Representations, Warranties and Covenants of the Company*****.** The Company represents and warrants to, and agrees with, the Issuer and the Underwriter that:

(a) The Company's representations and warranties contained in the most recent drafts of the Lease Agreement and the Credit Agreement furnished to the Underwriter will be true and correct on and as of the Date of Issuance and are hereby made to the Underwriter as if set forth herein.

(b) The Company has taken all necessary action to authorize, execute and deliver this Bond Purchase Agreement, the Series 2005B Purchase Agreement, the Lease Agreement, the Credit Agreement, the Remarketing Agreement and all other documents executed and delivered (or to be executed and delivered) in connection with the issuance of the Bonds and the other transactions contemplated hereby to which it is or is to be a party (collectively, the "Company Documents"), and this Bond Purchase Agreement has been duly executed and delivered and constitutes, and the other Company Documents when duly executed and delivered by the Company, will constitute the legal, valid and binding obligations of the Company enforceable in accordance with their respective terms except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and the application of general principles of equity or public policy as to the enforcement of certain provisions, such as indemnification provisions; the Company

Documents do not and will not conflict with or constitute on its part a material violation of, breach of, or default under, any law, administrative regulation, court decree, resolution or agreement or instrument known to it to which it is a party or by which it is bound; and all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required of the Company for the consummation of the transactions contemplated thereby and hereby have been obtained.

(c) There is no action, suit, proceeding or inquiry, or, to the best knowledge and information of the Company, any investigation, at law or in equity, or before or by any court, public board or body or other governmental authority, pending or, to the best knowledge and information of the Company, threatened against or affecting the Company wherein an unfavorable decision, ruling or finding could materially and adversely affect the condition (financial or otherwise) of the Company, or the transactions contemplated by this Bond Purchase Agreement or the Official Statement, or that in any manner raises any question concerning the legality, validity or enforceability of the Company Documents, nor to the best knowledge and belief of the Company is there any basis therefor.

(d) The execution, delivery and performance by the Company of the Company Documents are within the powers of the Company and do not and will not conflict with or violate the articles of incorporation or bylaws of the Company or any order, injunction, ruling or decree by which the Company or its property is bound, and do not and will not constitute a breach of or default under any agreement, indenture, mortgage, lease, note or other obligation, instrument or arrangement to which the Company is a party or by which the Company or any of its property is bound, or contravene or constitute a violation of any federal or state constitutional or statutory provision, rule or regulation to which the Company or any of its property is subject, the breach, default, contravention or violation of which could have a material adverse effect on the business or financial condition of the Company, and no approval, consent or other action by, or filing or registration with, any governmental authority or agency is required to be obtained or accomplished by the Company in connection therewith that has not been obtained or accomplished or will not be obtained or accomplished by the Date of Issuance provided that no representation is made as to compliance with Blue Sky law requirements.

(e) The information relating to the Company, the use of proceeds of the Bonds and the Project contained or incorporated by reference in the Official Statement or otherwise supplied by or on behalf of the Company in writing for inclusion therein, including, without limitation, Appendix B thereto, does not as of the Date of Issuance (and any amendment or supplement thereto as of each subsequent Closing Date shall not) contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Company has authorized the delivery of the Official Statement and approves of the use and distribution of the Official Statement by the Underwriter and the Remarketing Agent in connection with the initial sale and remarketing, respectively, of the Series 2005A Bonds from time to time.

(f) The Company is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money or under any instrument under or subject to which any indebtedness or swap or other derivative obligation has been incurred and no event has occurred and is continuing that, with the lapse of time or the giving of notice or both, would constitute an event of default under any such instrument.

(g) The Company agrees to make available to the Underwriter, without cost, sufficient copies of any relevant documents pertaining to the Company, as the Underwriter may require from time to time for the prompt and efficient performance by the Underwriter of its obligations hereunder.

(h) The Company agrees at its cost to amend or supplement the Official Statement with the Underwriter’s assistance whenever requested by the Underwriter, when, in the reasonable judgment of the Underwriter, such amendment or supplement is required in order to initially offer and sell any Additional Series 2005A Bonds in accordance with all applicable federal and state securities laws.

(i) Except as and to the extent the Issuer and the Underwriter receive express prior written notice in reasonable detail to the contrary, none of the foregoing representations made by the Company is or will be false or misleading in any material respect on or as of any subsequent Closing Date.

Section 7. ***Representations of the Underwriter*****.** The Underwriter represents to the Issuer and the Company that:

(a) The Underwriter is registered under the Securities Exchange Act of 1934, as amended (the "1934 Act"), as a municipal securities dealer.

(b) The undersigned officer of the Underwriter is duly authorized to execute this Bond Purchase Agreement on behalf of the Underwriter, and the Underwriter has full authority to take such action as it may deem advisable with respect to all matters pertaining to this Bond Purchase Agreement.

(c) The Underwriter will offer the Series 2005A Bonds only in states where the offer and sale are legal, either as exempt securities, or as exempt transactions, or as a result of due registration for sale in any such state.

Section 8. ***Conditions to the Obligations of the Underwriter*****.** The obligation of the Underwriter to accept delivery of and pay for the Initial Series 2005A Bonds on the Date of Issuance shall be subject, at the option of the Underwriter, to the accuracy in all material respects of the representations, warranties and agreements on the part of the Company and the Issuer contained herein as of the date hereof and as of the Date of Issuance, to the accuracy in all material respects of the statements of the officers and other officials of the Trustee, the Bank, the Company and the Issuer made in any certificates or other documents furnished pursuant to the provisions hereof, and to the performance by the Company and the Issuer of their obligations, as applicable, to be performed hereunder at or prior to the Date of Issuance and to the following additional conditions:

(a) On the Date of Issuance, the Initial Series 2005A Bonds, the Initial Series 2005B Bonds, the Indenture, the Lease Agreement, the Series 2005B Purchase Agreement, the Remarketing Agreement, the Credit Agreement and the Letter of Credit shall have been duly authorized, executed and delivered by the respective parties thereto, in substantially the forms heretofore submitted to the Underwriter with any such changes as shall have been agreed to in writing by the Underwriter, and said agreements shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriter, and there shall have been taken in connection therewith, with the issuance of the Initial Series 2005A Bonds and with the transactions contemplated thereby and by this Bond Purchase Agreement, all such actions as Bond Counsel or Underwriter's Counsel shall deem to be necessary and appropriate.

(b) The representations and warranties of each of the Company and the Issuer contained in this Bond Purchase Agreement shall be true, correct and complete in all material respects on the date hereof and on the Date of Issuance, as if made again on the Date of Issuance, and the Official Statement (as the same may be supplemented or amended with the written approval of the Underwriter) shall be true, correct and complete in all material respects and shall not contain any untrue statement of fact or omit to state any fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which such statements were made, not misleading.

(c) There shall have occurred no material adverse change in the condition (financial or otherwise) of the Company between the date hereof and the Date of Issuance.

(d) The Underwriter shall be paid the amount set forth in Section 4(a) on the Date of Issuance.

(e) At or prior to the Date of Issuance, the Underwriter shall have received the following documents, in each case satisfactory in form, scope and substance to the Underwriter:

(i) copies of the Indenture, the Lease Agreement, the Series 2005B Purchase Agreement, the Remarketing Agreement, and the Credit Agreement, duly executed and delivered by the respective parties

thereto, with such amendments, modifications or supplements as may have been agreed to in writing by the Underwriter, the Official Statement duly approved by the Issuer and the Company, and a copy of the Letter of Credit as executed by the Bank;

(ii) a final opinion of Bond Counsel, dated the Date of Issuance, in the form attached to the Official Statement, and a letter of Bond Counsel, dated the Date of Issuance and addressed to the Underwriter, the Trustee, the Bank and the Company, to the effect that its opinion addressed to the Issuer may be relied upon by such parties to the same extent as if such opinion were addressed to each of them;

(iii) an opinion of counsel to the Bank dated the Date of Issuance and addressed to the Issuer, the Company, the Rating Agency rating the Initial Series 2005A Bonds, the Trustee and the Underwriter to the effect that:

(1) the Bank is a national banking association, validly existing under the laws of the United States of America, and is empowered under such laws to issue the Letter of Credit and to take all actions required or permitted on its part to be taken, under the Letter of Credit;

(2) the Letter of Credit constitutes the legal, valid and binding obligation of the Bank, enforceable against the Bank in accordance with its terms, except (A) as limited by bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting generally the enforcement of creditors' rights and remedies generally; and (B) general principles of equity; and

(3) the Letter of Credit is exempt from the registration requirements of the 1933 Act;

(iv) one or more opinions of counsel to the Company, dated the Date of Issuance and addressed to the Issuer, the Bank, the Trustee and the Underwriter, to the effect, among other things, that:

(1) the Company is possessed of full power and authority to conduct its business as presently conducted and as contemplated to be conducted by the Company Documents;

(2) the Company is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and is duly qualified to do business in the State of New Mexico;

(3) the Company has full power and authority to execute and deliver the Company Documents; the Company Documents have been duly authorized, executed and delivered on its behalf and when executed by the other parties thereto will be the legal, valid and binding obligations of the Company, enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, moratorium or similar laws or by legal or equitable principles relating to or limiting creditors' rights generally or public policy as to the enforcement of certain provisions, such as indemnification provisions;

(4) the execution and delivery of the Company Documents and compliance by the Company with the provisions thereof will not result in a violation of, a breach of, or a default under the articles of incorporation or bylaws of the Company or any statute, indenture, mortgage, deed of trust, note agreement, other agreement or instrument to which the Company is a party or by which the Company or any of its property is bound, or any order, rule or regulation of any court or other governmental body having jurisdiction over the Company which breach might have a materially adverse effect on the ability of the Company to perform under the Company Documents;

(5) no authorization, approval, consent or order of any governmental agency or any other person or entity is required for the valid authorization, execution and delivery of the Company Documents on behalf of the Company that has not been obtained except that no opinion will be rendered by it concerning Blue Sky compliance or federal securities law registration exemption;

(6) to the best of counsel to the Company's knowledge, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or threatened against or affecting the Company which, if determined adversely to it, would have a

material adverse effect upon the consummation of the transactions contemplated by the Company Documents or the financial condition or assets of the Company; and

(7) to the best of counsel to the Company's knowledge, the information contained in the Official Statement describing the Company, the use of the proceeds of the Bonds and the Project is true and correct in all material respects, and such information does not contain any untrue or misleading statement of material fact or omit to state a material fact necessary to make statements therein, in light of the circumstances under which they were made, not misleading;

(v) a certificate of the Company dated the Date of Issuance, signed by the Company, confirming the representations set forth in Section 6 hereof as if given on the Date of Issuance;

(vi) a certificate of the Trustee dated the Date of Issuance, signed by a duly authorized officer of the Trustee, to the effect that:

(1) such officer is a duly authorized officer of the Trustee;

(2) the Trustee is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America, is authorized to carry out corporate trust powers in the State of New Mexico and has all necessary power and authority to enter into and perform its duties under the Indenture and upon the execution and delivery thereof by the Trustee, the Indenture shall constitute a legally valid and binding obligation of the Trustee, enforceable in accordance with its terms;

(3) the duties and obligations of the Trustee under the Indenture have been duly accepted by the Trustee;

(4) the Trustee is duly authorized to authenticate and deliver the Series 2005A Bonds to the Underwriter under instruction by the Issuer pursuant to the terms of the Indenture;

(5) to the best knowledge of such officer, the acceptance by the Trustee of the duties and obligations under the Indenture and the execution and delivery of the Indenture and compliance with the provisions thereof, will not conflict with, or constitute a breach of or default under, any law, administrative regulation, court decree, resolution, charter, bylaw or other agreement to which the Trustee is subject or by which it is bound;

(6) the representations and warranties of the Trustee in the Indenture are true, complete and correct in all material respects as of the Date of Issuance; and

(7) the Initial Bonds have been validly authenticated, registered and delivered by the Trustee;

(vii) a certificate of the Issuer, dated the Date of Issuance, signed by such officer as is acceptable to the Underwriter, to the effect that the representations of the Issuer contained in this Bond Purchase Agreement are true and correct in all material respects as of the Date of Issuance;

(viii) a certificate of the Bank, dated the Date of Issuance, signed by an authorized representative of the Bank to the effect that:

(1) all conditions precedent to the issuance of the Letter of Credit, including those specified in the Credit Agreement, have been satisfied or have been waived;

(2) to the actual knowledge of such authorized representative of the Bank, there is no action, suit, litigation, proceeding, inquiry or investigation at law or in equity or by or before any judicial or administrative court, agency, body or other entity, pending or threatened against the Bank or any of its properties, where an unfavorable decision, ruling or finding (i) would adversely affect the validity or enforceability of the Letter of Credit or (ii) would otherwise adversely affect the legal ability of the Bank to comply with its obligations under the Letter of Credit; and

(3) the information contained in the Official Statement describing the Bank is true and correct in all material respects;

(ix) an opinion of Underwriter's Counsel dated the Date of Issuance and addressed to the Issuer, the Trustee, the Bank, the Underwriter and the Company substantially in the form of *Exhibit B* hereto;

(x) an opinion of Underwriter's Counsel dated the Date of Issuance and addressed to the Underwriter substantially in the form of *Exhibit C* hereto;

(xi) evidence satisfactory to the Underwriter to the effect that the Initial Series 2005A Bonds have received a rating of "AA/A-1+" or better from Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., which rating remains in effect on the Date of Issuance;

(xii) evidence satisfactory to the Underwriter that the Series 2005B Bond Purchaser has purchased $17,975,000 aggregate principal amount of Initial Series 2005B Bonds for its own account on the Initial Closing Date; and

(xiii) such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriter, Bond Counsel or Underwriter's Counsel may reasonably request to evidence compliance by the Issuer, the Company, the Bank and the Trustee with legal requirements, the truth and accuracy, as of the Date of Issuance, of the representations of the Issuer, the Company, the Bank and the Trustee, and the due performance or satisfaction by the Issuer, the Company, the Bank and the Trustee at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer, the Company, the Bank and the Trustee.

Section 9. ***Failure to Satisfy Conditions; Underwriter's Right to Terminate*****.**

(a) If the Issuer and the Company are unable to satisfy the conditions to the obligations of the Underwriter set forth in this Bond Purchase Agreement, or if the obligations of the Underwriter are terminated by the Underwriter for any reason permitted by this Bond Purchase Agreement, this Bond Purchase Agreement will terminate, and none of the Issuer, the Company or the Underwriter will be under further obligation hereunder; except that the obligations to pay expenses as provided in Section 4 hereof and all rights to indemnity or contribution as provided in Section 10 hereof shall continue in full force and effect to the extent set forth therein. The Underwriter may, in its discretion, waive any one or more of the conditions imposed by this Bond Purchase Agreement and proceed with the purchase of the Series 2005A Bonds on the Date of Issuance or any subsequent Closing Date.

(b) The Underwriter may terminate this Bond Purchase Agreement by notification to the Issuer and the Company if at any time subsequent to the date hereof: (i) any legislation, ordinance, rule or regulation shall have been enacted by any governmental body, department or agency of the State of New Mexico or any decision by any court of competent jurisdiction shall have been rendered that in the reasonable opinion of the Underwriter materially adversely affects the marketability of the Series 2005A Bonds; (ii) any legislation shall have been enacted, any decision by a court of the United States of America shall have been rendered or any stop order, ruling, regulation or official statement by or on behalf of the Securities and Exchange Commission or other governmental agency shall have been made to the effect that the Series 2005A Bonds or the Indenture are not exempt from registration, qualification or other requirements of the 1933 Act, the Trust Indenture Act of 1939, as amended, or other federal securities laws; (iii) there shall have occurred any new outbreak of hostilities or any national or international calamity or crisis, the effect of such outbreak, calamity or crisis being such as could cause a major disruption in the debt markets and as, in the reasonable judgment of the Underwriter, would make it impracticable for it to market the Series 2005A Bonds or to enforce contracts for the sale of the Series 2005A Bonds; (iv) there shall be in force a general suspension of trading on The New York Stock Exchange, Inc., or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on The New York Stock Exchange, Inc., whether by virtue of a determination by that exchange or by order of the Securities and Exchange Commission or any other governmental authority having jurisdiction; (v) a general banking moratorium shall have been declared by federal, New York, or New Mexico authorities having jurisdiction and be in force; or (vi) any event shall have occurred or condition shall exist which makes untrue or incorrect, as of such time, in any material respect, any

statement or information contained in the Official Statement or which is not reflected in the Official Statement, but should be reflected therein in order to make such statements and information contained therein not misleading as of such time in any material respect.

Section 10. ***Indemnification*****.**

(a) The Company agrees to indemnify and hold harmless the Underwriter and the Issuer and any member, commissioner, officer, director, employee or agent of the Underwriter or the Issuer and each person, if any, who controls the Underwriter or the Issuer within the meaning of Section 15 of the 1933 Act, or Section 20 of the 1934 Act (collectively, the "Indemnified Parties") against any and all losses, costs, claims, damages, liabilities, attorneys' fees or other expenses whatsoever (collectively, "Loss") which any of them may incur or suffer, without gross negligence, willful misconduct or bad faith on their part, arising out of, in connection with or relating to the issuance and sale of the Bonds and the determination by the Underwriter of the initial Interest Rate on the Series 2005A Bonds, including, without limitation, any Loss caused by, or which arises out of or relates to, any breach (or alleged breach) by the Company of its representations, warranties or covenants set forth herein, or any untrue statement or misleading statement of a material fact contained in the Official Statement or incorporated therein by reference (except, with respect to the Issuer, statements provided or approved by the Issuer and, with respect to the Underwriter, statements pertaining to the Bank or the Underwriter) or supplied by the Company in writing in connection with the issuance and sale of Series 2005A Bonds in accordance with the terms hereof and of the Remarketing Agreement (collectively, the "Disclosure Materials"), or which arises out of or relates to, any omission or alleged omission from such Disclosure Materials of any material fact required to be stated therein or necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading (except omissions or alleged omissions pertaining to the respective Indemnified Party). This indemnity agreement is in addition to any other liability that the Company may otherwise have.

(b) In case any suit, action or proceeding (including any governmental investigation) shall be brought against one or more of the Indemnified Parties and in respect of which indemnity may be sought as provided herein, such Indemnified Party or Indemnified Parties shall promptly notify the Company in writing setting forth the particulars of such suit, action or proceeding and the Company shall promptly assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Party or Indemnified Parties, payment of all expenses and the right to negotiate and consent to settlement; but the omission to notify the Company as provided herein shall not relieve the Company from any liability that it may have (i) under this Section 10, so long as the Company is given the reasonable opportunity to defend such claim, and (ii) otherwise than under this Section 10. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless (i) the employment of such counsel has been specifically authorized in writing by the Company, (ii) the named parties to any such action (including any impleaded parties) include both the Company and such Indemnified Party or Indemnified Parties and representation of both the Company and such Indemnified Party or Indemnified Parties by the same counsel would be inappropriate due to actual or potential differing interests between them, or (iii) the Indemnified Party or Indemnified Parties have been advised that one or more legal defenses may be available to any or all of them which may not be available to the Company in which case the Company shall not be entitled to assume the defense of such suit notwithstanding its obligation to bear the fees and expenses of such counsel. The Company shall not be liable for any settlement of any such action effected without its consent, but if settled with such consent or if there is a final judgment in any such action with or without consent, the Company agrees to indemnify and hold harmless the Indemnified Party or Indemnified Parties from and against any Loss by reason of such settlement or judgment.

(c) In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in this Section 10 is due in accordance with its terms but is for any reason held by a court to be unavailable from the Company or unenforceable against the Company on grounds of public policy or otherwise,

the Company and the Underwriter shall contribute severally to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) to which the Company and the Underwriter may be subject in such proportion so that the Underwriter is responsible for that portion represented by the percentage that the underwriting fee referred to in Section 4(a) hereof bears to the initial par amount of all of the Series 2005A Bonds and the Company is responsible for the balance; provided, however, that no person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the 1933 Act, shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. Any party entitled to contribution shall, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party under this paragraph, notify such party from whom contribution may be sought, but the omission so to notify such party shall not relieve the party from whom contribution may be sought from any other obligation it or they may have hereunder or otherwise. The liabilities under this paragraph are in addition to any other liabilities that the parties may have.

(d) The obligations under this Section 10 shall remain operative and in force and effect regardless of any investigation made by or on behalf of the Issuer or the Underwriter, and shall survive the issuance and the maturity of the Series 2005A Bonds and any termination of this Bond Purchase Agreement.

Section 11. ***Notices.*** Except as otherwise provided herein, any notice or other communication required or permitted by this Bond Purchase Agreement shall be in writing, and, if sent to the Underwriter, shall be mailed, delivered or telecopied and confirmed to the Underwriter at 600 Peachtree Street, 4th Floor, Atlanta, Georgia 30308, Attention: Corporate Tax-Exempt Finance, and if to the Issuer or the Company, shall be mailed, delivered or telecopied and confirmed at its address set forth above.

Section 12. ***Governing Law*****. THIS BOND PURCHASE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW MEXICO APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE.**

Section 13. ***Counterparts.*** This Bond Purchase Agreement may be executed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute but one and the same instrument.

Section 14. ***Binding Effect.*** This Bond Purchase Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, except that no party hereto may assign any of its rights or obligations hereunder without the consent of the other parties.

Section 15. ***Termination.*** This Bond Purchase Agreement shall terminate (except as to rights to any fees payable and rights to indemnity or contribution, which shall survive any termination) on the earlier of (a) the issuance of the Maximum Permitted Amount of Series 2005A Bonds under the Indenture or (b) the receipt by the Underwriter of written notice from the Company that the Company does not intend to request the issuance of any Additional Series 2005A Bonds thereafter under the Indenture.

Section 16. ***Miscellaneous.***

(a) Nothing herein shall be construed to make any party hereto an employee of any other or to establish any fiduciary relationship among the Issuer, the Company and the Underwriter.

(b) This Bond Purchase Agreement may be amended from time to time only by an instrument in writing executed by all the parties hereto.

(c) The headings contained herein are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Bond Purchase Agreement.

(d) If any one or more of the covenants, provisions or agreements contained in this Bond Purchase Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity of such covenants, provisions and agreements shall in no way affect the validity or effectiveness of the remainder of this Bond Purchase Agreement, and this Bond Purchase Agreement shall continue in full force to the fullest extent permitted by law.

(e) All of the representations, warranties and covenants made in this Bond Purchase Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any party hereto, or (ii) delivery of and any payment for any Bonds hereunder.

(f) No recourse shall be had for any claim based on this Bond Purchase Agreement against any member, commissioner, officer, agent or employee, past, present or future, of the Issuer or of any successor body thereto, either directly or through the Issuer, or any such successor body, under any constitutional provision, statute or rule of law or otherwise.

(g) THE BONDS ARE NOT GENERAL OBLIGATIONS OF THE ISSUER BUT ARE SPECIAL, LIMITED OBLIGATIONS PAYABLE SOLELY FROM BOND PROCEEDS, RENT PAID BY THE COMPANY UNDER THE LEASE AGREEMENT AND OTHER REVENUES PLEDGED THERETO AND HELD BY THE TRUSTEE UNDER THE INDENTURE WHICH CONSTITUTE THE TRUST ESTATE AND, IN THE CASE OF THE SERIES 2005A BONDS, FROM MONIES DRAWN UNDER THE LETTER OF CREDIT. IT IS HEREBY EXPRESSLY MADE A CONDITION OF THIS BOND PURCHASE AGREEMENT THAT ANY COVENANTS OR REPRESENTATIONS HEREIN CONTAINED OR CONTAINED IN THE BONDS DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PERSONAL OR PECUNIARY LIABILITY OR CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE ISSUER, AND IN THE EVENT OF A BREACH OF ANY SUCH COVENANT OR REPRESENTATION, NO PERSONAL OR PECUNIARY LIABILITY OR CHARGE PAYABLE DIRECTLY OR INDIRECTLY FROM THE REVENUES (OTHER THAN THOSE DERIVED FROM THE LEASING OR SALE OF THE PROJECT) OF THE ISSUER SHALL ARISE THEREFROM. NOTHING CONTAINED IN THIS SECTION, HOWEVER, SHALL RELIEVE THE ISSUER FROM THE OBSERVANCE AND PERFORMANCE OF THE SEVERAL COVENANTS AND AGREEMENTS ON ITS PART HEREIN CONTAINED. THE ISSUER HAS NO TAXING AUTHORITY WITH RESPECT TO THE BONDS.

Very truly yours,

BANC OF AMERICA SECURITIES LLC,
as Underwriter

By: /s/ W. JOHN ECKEL, JR.
Name: **W. John Eckel, Jr.**
Title: **Principal**

ACCEPTED AND AGREED:

BERNALILLO COUNTY, NEW MEXICO

By: /s/ ALAN B. ARMIJO
Name: **Alan B. Armijo**
Title: **Chair of the County Commissioners**

TEMPUR PRODUCTION USA, INC.

By: /s/ WILLIAM H. POCHE
Name: **William H. Poche**
Title: **Assistant Treasurer**

Exhibit 10.5

TEMPUR WORLD, LLC

BERNALILLO COUNTY, NEW MEXICO

and

TEMPUR PRODUCTION USA, INC.

BOND PURCHASE AGREEMENT

Dated: October 26, 2005

Bernalillo County, New Mexico
Taxable Industrial Revenue Bonds
(Tempur Production USA, Inc. Project)
Fixed Rate Unsecured Industrial Revenue Bonds Series 2005B

TEMPUR WORLD, LLC (together with its successors, assigns and transferees, the "Purchaser"), BERNALILLO COUNTY, NEW MEXICO (the "Issuer") and TEMPUR PRODUCTION USA, INC. (the "Company") agree:

Section 1. *Recitals*. The Issuer and The Bank of New York Trust Company, N.A., as Trustee (the "Trustee"), have entered into a Trust Indenture dated as of September 1, 2005 (the "Indenture"). Pursuant to the Indenture, the Issuer will issue its Taxable Industrial Revenue Bonds (Tempur Production USA, Inc. Project) Fixed Rate Unsecured Industrial Revenue Bonds Series 2005B in the maximum principal amount of $25,000,000 (the "Bonds"). Proceeds of the Bonds will be used to finance the acquisition, construction and equipping of an approximately 750,000 square foot mattress and pillow manufacturing plant in the County of Bernalillo, City of Albuquerque, New Mexico (the "Project").

Section 2. *Purchase and Delivery*. On the basis of the representations and covenants contained in this Bond Purchase Agreement (this "Agreement") and subject to the terms and conditions contained in this Agreement, the Purchaser agrees to purchase the Bonds from the Issuer and the Issuer agrees to sell the Bonds to the Purchaser. As consideration for the sale of the Bonds, the Purchaser agrees to make advances on the Bonds at the times and under the conditions specified in Section 2.10 of the Indenture. The Issuer will deliver the initial Bonds to the Purchaser, at or prior to 10:00 a.m., Eastern Time, on October 27, 2005, or at such other time not later than five business days thereafter as the Issuer, the Trustee and the Purchaser may agree (the "Closing Date").

Section 3. *Issuer Representations*. The Issuer represents that, as of the date of this Agreement:

(a) Each of the representations of the Issuer in the Lease Agreement dated as of September 1, 2005 (the "Lease" and, together with the Indenture and this Bond Purchase Agreement, the "Bond Documents") and the Indenture is true and correct as if made on and as of the date of this Agreement.

(b) Pursuant to an ordinance duly adopted by the County Commission of the Issuer on August 23, 2005 (the "Bond Ordinance"), the Issuer duly authorized and approved (i) the execution and delivery by the Issuer of the Bond Documents and the performance by the Issuer of its obligations under the Bond Documents, and (ii) the issuance, execution and delivery of the Bonds. The Bond Ordinance has not been amended, modified or repealed.

(c) The Issuer is duly authorized under the Constitution and laws of the State to issue the Bonds and to execute, deliver and perform its obligations under the Bond Documents and the Bonds, to pledge the security described in the Indenture and pledged thereby in the manner and to the extent therein set forth; based on the opinion of Bond Counsel, all actions required of the Issuer for the issuance of the Bonds and the execution and delivery of, and the performance of its obligations under, the Bond Documents and the Bonds have been duly and effectively taken; the Bond Documents have been duly executed, issued and delivered by the Issuer and, assuming the due authorization and execution thereof by the other parties thereto, are valid, binding and enforceable agreements of the Issuer, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and general principles of equity, and, based on the opinion of Bond Counsel, the Bonds have been duly authorized, executed, issued and delivered and constitute, and in the hands of the Purchaser will constitute, valid and binding limited obligations of the Issuer, enforceable in accordance with their terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and general principles of equity.

(d) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body or other governmental authority pending, with respect to which the Issuer has received service of process, or, to the knowledge of the Issuer, threatened against or affecting it wherein an unfavorable decision, ruling or finding could adversely affect the transactions contemplated by this Agreement, or which in any way raises any question concerning the validity of the Bonds or the Bond Documents, nor to the best knowledge and belief of the Issuer is there any basis therefor.

(e) The execution, delivery and performance by the Issuer of the Bond Documents and the Bonds do not and will not violate any order, injunction, ruling or decree by which the Issuer is bound, and do not and will not constitute a breach of or a default under any agreement, indenture, mortgage, lease, note or other obligation, instrument or arrangement to which the Issuer is a party or by which the Issuer or any of its property is bound, or contravene or constitute a violation of any law, rule or regulation to which the Issuer or any of its property is subject, and no approval or other action by, or filing or registration with, any governmental authority or agency is required in connection therewith which has not been previously obtained or accomplished (except that the Issuer makes no representation as to compliance with state securities or "Blue Sky" laws or the securities laws of the United States and as to any permits, governmental permissions, including environmental clearances, rights and licenses as may be necessary for the construction and operation of the Project, as to which no representation or warranty or covenant is made).

(f) The statements contained in any certificate provided under this Agreement and signed and delivered to the Purchaser by any authorized official of the Issuer will be deemed a representation and warranty by the Issuer to the Purchaser.

Section 4. *Company Representations*. The Company represents that, as of the date of this Agreement:

(a) The Company is a for-profit corporation duly incorporated and validly existing and in good standing under the laws of the State of Virginia and has or will obtain at the necessary time, all necessary licenses and permits to lease and operate the Project and other property financed with the proceeds of the Bonds. The Company has not received any notice of an alleged violation and is not in violation of any zoning, land use, environmental or other similar law or regulation applicable to the property subject to the Lease. The Company has full right, power and authority to approve the Bond Documents and to perform the other acts and things as provided for in this Agreement. The Company has full right, power and authority to approve, enter into, deliver and/or perform its obligations under the Bond Documents.

(b) The approval by the Company of the Bond Documents and the execution, delivery and performance of its obligations under the Bond Documents, compliance by the Company with the provisions hereof and of any and all of the foregoing documents, the application by the Company of the proceeds of the sale of the Bonds for the purposes described in the Indenture, and the consummation of the transactions contemplated herein do not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, the Articles of Incorporation, as amended, or the By-Laws, as amended, of the Company or any material agreement, indenture, mortgage, lease or instrument to which the Company is a party or by which the Company or any of its property is or may be bound or any existing law or court or administrative regulation, decree or order which is applicable to the Company or any of its property, and do not and will not result in the creation or imposition of any lien of any nature upon any of the property of the Company, except for Permitted Liens (as defined in the Lease).

(c) No "Default," "Event of Default" or event which, with notice or lapse of time or both, would constitute a "Default" or an "Event of Default" under the Bond Documents has occurred and is continuing.

(d) The Company has duly authorized all necessary action to be taken by it for (i) the issuance and delivery of the Bonds by the Issuer upon the terms and conditions and for the uses set forth or described herein and in the Indenture; (ii) the approval of the Bonds and the Indenture; and (iii) the execution, delivery or receipt of and the performance as applicable, of its obligations under the Bond Documents and any and all such other agreements and documents as may be required to be executed, delivered or received by the Company in order to carry out, effectuate and consummate the transactions contemplated herein and therein.

(e) The Company will not take or omit to take any action which will in any way cause or result in the proceeds of the sale of the Bonds being applied in a manner other than as provided in the Indenture and the Lease.

(f) To the knowledge of the Company, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company or its property wherein an unfavorable decision, ruling or

finding would have a material adverse effect on (i) the transactions contemplated in this Agreement or (ii) the validity or enforceability in accordance with their respective terms of the Bond Documents.

(g) On or before the date of the sale of the Bonds, the Company will approve or execute and deliver, as applicable, the Bond Documents. This Agreement is, and when executed and delivered, as applicable, the Bond Documents will be the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

(h) To the knowledge of the Company, all approvals, consents, authorizations, certifications, and other orders of any government authority, board, agency or commission having jurisdiction, and all filings with such entities, failure to obtain or make which would materially adversely affect the performance by the Company of its obligations hereunder or under the Bond Documents, have been duly obtained. All permits and approvals required to date for the construction and operation of the Project have been obtained or will be obtained in due course.

(i) Any certificate signed by an authorized officer of the Company delivered to the Issuer or to the Purchaser in connection with the issuance of the Bonds will be deemed a representation and warranty by the Company to the Issuer and the Purchaser as to the statements made therein.

Section 5. *Purchaser Representations.* The Purchaser represents and acknowledges that, as of the date of this Agreement:

(a) The Purchaser is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Delaware. The Purchaser has full right, power and authority to approve the Bond Documents and to perform the other acts and things as provided for in this Agreement. The Purchaser has full right, power and authority to approve, enter into, deliver and/or perform its obligations under the Bond Documents.

(b) The Purchaser is purchasing the Bonds for its own account for investment and with no present intention of distributing or reselling the Bonds or any interest in the Bonds but without prejudice, however, to its right at all times to sell or otherwise dispose of all or any part of the Bonds in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder, applicable state securities laws and regulations and the terms of the Bonds.

(c) The Purchaser understands that the Bonds are special, limited, and not general, obligations of the Issuer, are payable solely from the revenues received by the Purchaser on behalf of the Issuer under the Lease and from the security therefor as described in the Indenture but from no other sources. It understands that the Bonds are not secured by any obligation or pledge of any monies received or to be received from taxation or from the State of New Mexico (the "State") or any political subdivision or taxing district thereof (including, without implied limitation, the Issuer), and that the Bonds will never represent or constitute a general obligation, debt or bonded indebtedness of the Issuer, the State, or any political subdivision thereof, and that no right will exist to have taxes levied by the Issuer, the State, or any political subdivision thereof, for the payment of principal of, premium, if any, and interest on the Bonds. The Purchaser understands that the payment of the Bonds depends upon the general credit of the Company, and upon the security granted in the Indenture for the Company's obligations under the Lease.

Pursuant to the terms of the Lease, the Company shall make payments to the Trustee for the account of the Issuer, in such amounts at such times as are necessary to make all payments of principal of, interest on and redemption price of the Bonds in accordance with the terms of the Bond Documents as and when due, and all such payments shall be netted against any monies and investment made by the Purchaser to the Project Fund (as defined in the Indenture) (including interest income); provided however that the Fiscal Agent shall not make payments when due of principal of and interest on, or the redemption price of, the Bonds until all payments due of principal of and interest on, or the redemption price of, the Series 2005A Bonds (as defined in the Indenture) have been made in full as required under

the Indenture. The Purchaser will look only to the Company for payment of the Bonds and upon the security granted in the Indenture for the Company's obligations under the Lease.

(d) The Purchaser has received copies of financial statements of the Company, has been afforded the opportunity to discuss the business, assets and financial position of the Company with the officers, employees and auditors of the Company, and has received such information concerning the Company and its business, assets and financial position, and the Project as it deems necessary in making its decision to purchase the Bonds.

(e) The Purchaser is duly and legally authorized to purchase the Bonds, has knowledge and experience in financial and business matters, is capable of evaluating the merits and risks of its purchase of the Bonds, is aware of the intended use of proceeds of the Bonds, and understands that interest on the Bonds is *not* excludable from gross income for federal income tax purposes.

(f) The Purchaser understands that the Issuer has not undertaken to furnish any information with respect to the Company or to ascertain the accuracy of any information furnished to the Purchaser with respect to the Company and the Purchaser has not requested or received any representations from the Issuer with respect to any such information, its accuracy or completeness. The Purchaser, for itself and for any subsequent holder of the Bonds, waives any requirement of due diligence in investigation or inquiry on the part of the Issuer, its officials, counsel, agents and consultants and all claims, actions or causes of action which the Purchaser may have from and after the date hereof against the Issuer, its officials, counsel, agents and consultants growing out of any such action which any of the foregoing took, or could have taken, in connection with the authorization, execution, delivery, sale or resale of the Bonds to or by the Purchaser or in connection with any statement or representation which induced the Purchaser to purchase the Bonds.

(g) The Purchaser has received and reviewed copies in draft and final form of the Bond Documents and the Bond Ordinance.

(h) This Agreement constitutes a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

(i) The Purchaser has been informed by the Company and agrees that the Indenture has not been qualified under the Trust Indenture Act of 1939, and that the Bonds (i) are not being registered or otherwise qualified for sale under (a) the Securities Act of 1933, as amended, or (b) the "Blue Sky" laws and regulations of any state, (ii) will not be listed on any stock or other securities exchange, (iii) will not carry a rating from any rating service and (iv) will not be readily marketable. The Purchaser has been informed by the Company and agrees that a legend will be placed on the Bond certificates or any other documents evidencing ownership of the Bonds to the effect that they have not been registered under the Securities Act of 1933, as amended, or the applicable state "Blue Sky" laws and that they may only be transferred in compliance with the Indenture and the terms of the Bonds.

(j) The Purchaser acknowledges that its purchase of the Bonds constitutes a transaction in a bond secured by the Indenture which is, among other things, a personal property security agreement, pursuant to which the Bonds are offered and sold as a unit.

(k) The execution, delivery and performance of this Agreement by the Purchaser will not constitute a default under any other material agreement by which the Purchaser is bound.

Section 6. *Indemnification*.

(a) The Company agrees to indemnify, defend and hold harmless all officials, commissioners, officers and employees of the Issuer and each person, if any, who has the power to direct or cause the direction of the management and policies of the Issuer (the "Indemnified Parties") against any and all losses, claims, damages, liabilities, joint or several, or any expenses related thereto whatsoever arising out of or in connection with or caused by any pledge, offering, sale or resale of the Bonds in violation of any federal or state securities laws or by an untrue statement or misleading statement or alleged untrue statement or alleged

misleading statement of a material fact made to any person or caused by an omission or alleged omission of any material fact in connection with the Bonds or the pledge, sale, resale or delivery thereof.

In case a claim shall be made or any action shall be brought against one or more of the Indemnified Parties based upon the matters described in the preceding paragraph and in respect of which indemnity is sought against the Company pursuant to the preceding paragraph, the Indemnified Party or Parties seeking indemnity shall promptly notify the Company, in writing, and the Company shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the Company and approved in writing by the Issuer (provided that such approval by the Issuer shall not be unreasonably withheld), the payment of all expenses and the right to participate in negotiations and to consent to settlement. If any Indemnified Party is advised in a written opinion of counsel that there may be legal defenses available to such Indemnified Party which are adverse to or in conflict with those available to the Company, or that the defenses of such Indemnified Party should be handled by separate counsel, the Company shall not have the right to assume or cause the assumption of the defense of such Indemnified Party, however, the Company shall be responsible for the reasonable fees and expenses of counsel retained by such Indemnified Party in assuming its own defense. If the Company shall have failed to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Issuer or in the event it is determined the defense of such Indemnified Party should be handled by separate counsel within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company. Notwithstanding, and in addition to, any of the foregoing, any one or more of the Indemnified Parties shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Party or Parties unless the employment of such counsel has been specifically authorized in writing by the Company. The Company shall not be liable for any settlement of any such action effected without the written consent of the Company, but if settled with the written consent of the Company or if there is a final judgment for the plaintiff in any such action with or without consent, the Company agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment. The covenants and agreements of the Company herein contained shall survive the delivery of the Bonds.

(b) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Section is for any reason held to be unavailable to the Indemnified Parties other than in accordance with its terms, the Company shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by such indemnity agreement incurred by the Issuer in such proportions as determined by a court having jurisdiction of the matter; provided, however, that no person guilty of fraudulent misrepresentation or willful misconduct shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation or willful misconduct. For purposes of this Section, each person, if any, who controls an Indemnified Party shall have the same rights to contribution as such Indemnified Party.

Section 7. *Conditions*. The obligation of the Purchaser to purchase the Bonds and the obligation of the Issuer to sell the Bonds are subject to satisfaction of the following conditions precedent:

(a) The representations of the Issuer, the Purchaser and the Company in this Agreement will be true and correct on and as of the Closing Date as if made on and as of the Closing Date.

(b) As of the Closing Date, no Default (as defined in the Indenture) or Event of Default (as defined in the Lease) will have occurred and be continuing, and no event will have occurred and be continuing which, with the lapse of time or the giving of notice or both, would constitute a Default or Event of Default.

(c) On or before the Closing Date, all actions required to be taken as of the Closing Date in connection with the Bonds, the Bond Ordinance and the Bond Documents by the Issuer and the Company will have been taken, and the Issuer and the Company will each have performed and complied with all agreements, covenants and conditions required to be performed or complied with by the Bond Ordinance and the Bond Documents.

(d) The Indenture will have been duly executed and delivered by the Issuer and the Trustee. The Lease will have been duly executed by the Issuer and the Company. Each of the Bond Documents, the Bond Ordinance and all other official action of the Issuer relating to the Bonds, the Project and the Bond Documents will be in full force and effect on the Closing Date and will not have been amended, modified or supplemented on or before the Closing Date.

(e) The Issuer, the Company and the Purchaser will have received the following, each dated the Closing Date:

(i) the approving opinion of Brownstein Hyatt & Farber, P.C., Company Counsel, substantially in the form of *Exhibit A*;

(ii) the opinion of counsel to the Company (which opinion, as to matters of New Mexico law may be given by Brownstein Hyatt & Farber, P.C., as New Mexico counsel to the Company), substantially in the form of *Exhibit B*;

(iii) the opinion of Hughes & Strumor Ltd Co., Bond Counsel, substantially in the form set forth in *Exhibit C*;

(iv) an opinion of counsel to the Purchaser, substantially in the form set forth in *Exhibit D*;

(v) a certificate of and with reference to the Issuer signed by a duly authorized officer of the Issuer to the effect set forth in subsections (a), (b) and (c) of this Section 7;

(vi) a certificate of and with reference to the Company signed by a duly authorized officer of the Company to the effect set forth in subsections (a), (b) and (c) of this Section 7; and

(vii) a certificate of and with reference to the Purchaser signed by a duly authorized officer of the Purchaser to the effect set forth in subsection (a) of this Section 7; and

(viii) a certificate of the Trustee signed by a duly authorized officer of the Trustee, to the effect that (A) he or she is an authorized officer of the Trustee; (B) the Indenture has been duly executed and delivered by the Trustee; and (C) the Trustee has all necessary corporate powers required to execute and deliver, and to perform its obligations under, the Indenture.

If any conditions to the obligations of the Purchaser or the Issuer under this Agreement are not satisfied and if the satisfaction of such conditions is not waived by the Purchaser and the Issuer, then, at the option of the Purchaser and the Issuer, (x) the Closing Date will be postponed for such period, not to exceed seven days, as may be necessary for such conditions to be satisfied or (y) the obligations of the Purchaser and the Issuer under this Agreement will terminate, and neither the Purchaser nor the Issuer will have any further obligations or liabilities under this Agreement, however, the Company will continue to be obligated to reimburse the Issuer for the expenses of the Issuer.

Section 8. *Survival*. All agreements, covenants and representations and all other statements of the Issuer, the Company and the Purchaser and their respective officers set forth in or made pursuant to this Agreement will survive the Closing Date and the delivery of and payment for the Bonds.

Section 9. *Governing Law*. This Agreement will be governed by and construed in accordance with the laws of the State of New Mexico applicable to agreements made and to be performed in the State of New Mexico, without regard or effect given to conflict of laws or rules which would require the application of any other jurisdiction.

Section 10. *Counterparts*. This Agreement may be executed in any number of counterparts, each of which so executed and delivered will constitute an original and all together will constitute but one and the same instrument.

Section 11. *Severability*. If any section, paragraph, clause or provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the Issuer, the Company and the Purchaser have caused this Agreement to be executed by their duly authorized officers, as of the day and year first above written

BERNALILLO COUNTY, NEW MEXICO

By /s/ ALAN B. ARMIJO
Chair, Board of County Commissioners

TEMPUR WORLD, LLC

By /s/ WILLIAM H. POCHE
Its **Assistant Treasurer**

TEMPUR PRODUCTION USA, INC.

By /s/ WILLIAM H. POCHE
Its **Assistant Treasurer**

Exhibit 10.6

REMARKETING AND INTEREST SERVICES AGREEMENT

This **REMARKETING AND INTEREST SERVICES AGREEMENT**, dated as of September 1, 2005 (the "Remarketing Agreement"), by and between **TEMPUR PRODUCTION USA, INC.,** a Virginia corporation (the "Company"), and **BANC OF AMERICA SECURITIES LLC**, a Delaware limited liability company, as remarketing agent (the "Remarketing Agent");

W I T N E S S E T H:

WHEREAS, Bernalillo County, New Mexico, a political subdivision of the State of New Mexico (the "Issuer"), has authorized the issuance and sale of its Taxable Variable Rate Industrial Revenue Bonds (Tempur Production USA, Inc. Project) Series 2005A, in the initial aggregate principal amount of $53,925,000 (the "Initial Series 2005A Bonds"), pursuant to the provisions of a Trust Indenture, dated as of the date hereof (the "Indenture"), by and between the Issuer and The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), in order, among other things, to finance the acquisition and construction of a manufacturing facility (the "Project") to be leased by the Issuer to the Company pursuant to the provisions of a Lease Agreement dated as of the date hereof (the "Lease Agreement") between the Issuer and the Company and used by the Company in the manufacture of mattresses and neck pillows; and

WHEREAS, contemporaneously with the issuance of the Initial Series 2005A Bonds, Bank of America, N.A. (the "Bank") will issue its irrevocable Letter of Credit (the "Letter of Credit") in favor of the Trustee, for the account of the Company, obligating the Bank to pay to the Trustee, in accordance with the terms thereof, upon presentation of drafts and certificates as required therein, certain amounts specified therein for payment of the principal or purchase price of and interest on the Initial Series 2005A Bonds; and

WHEREAS, the Indenture permits the issuance by the Issuer of additional Taxable Variable Rate Industrial Revenue Bonds (Tempur Production USA, Inc. Project) Series 2005A (the "Additional Series 2005A Bonds") from time to time bearing interest at the same rates and repayable on the same dates as the Initial Series 2005A Bonds and otherwise on a parity with the Initial Series 2005A Bonds as to security and right to payment from draws on the Letter of Credit, as amended in connection with the issuance of such Additional Series 2005A Bonds (the Initial Series 2005A Bonds and any Additional Series 2005A Bonds sold pursuant to the terms of the Bond Purchase Agreement (as hereinafter defined) being hereinafter referred to together as the "Series 2005A Bonds") to finance additional costs of the Project leased to the Company, provided that the aggregate principal amount of the Series 2005A Bonds that may be issued under the Indenture shall not exceed $75,000,000; and

WHEREAS, Banc of America Securities LLC, acting in its capacity as Underwriter (the "Underwriter"), has agreed to purchase all of the Initial Series 2005A Bonds on their date of issuance (the "Date of Issuance") and, subject to compliance with certain conditions, all Additional Series 2005A Bonds issued by no later than May 1, 2007 on their respective dates of issuance (each such date being hereinafter referred to as a "Closing Date") pursuant to the terms of a Bond Purchase Agreement dated October 26, 2005 (the "Bond Purchase Agreement") among the Underwriter, the Issuer and the Company; and

WHEREAS, the Series 2005A Bonds are subject to both optional and mandatory tender for purchase by the holders thereof and to remarketing, all as provided in the Indenture; and

WHEREAS, the Series 2005A Bonds are more fully described in the Official Statement dated October 20, 2005 (together with all amendments, modifications and supplements thereto, collectively the "Official Statement") prepared in connection with the purchase and sale of the Initial Series 2005A Bonds; and

WHEREAS, the Company, with the approval of the Issuer, has requested that the Remarketing Agent act as remarketing agent under the Indenture to perform certain services as provided herein and in accordance with the Indenture after the Series 2005A Bonds have been purchased by the Underwriter on the Date of Issuance and each subsequent Closing Date, including, without limitation, the remarketing of Series 2005A Bonds tendered for purchase as the designee of the Company and the setting of the interest rate on the Series 2005A Bonds as the designee of the Company and the Issuer, and the Remarketing Agent is willing to accept such appointment and perform such services on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for and in consideration of the covenants herein made, and upon the terms and subject to the conditions herein set forth, the parties hereto agree as follows:

Section 1. ***Definitions*****.** All capitalized terms used herein and not otherwise herein defined shall have the meanings ascribed to them in the Indenture.

Section 2. ***Appointment of Remarketing Agent*****.** Pursuant to the Indenture and this Remarketing Agreement, Banc of America Securities LLC is hereby appointed as the Remarketing Agent with respect to the Series 2005A Bonds, and Banc of America Securities LLC hereby accepts such appointment, with such duties as described herein and in the Indenture. Unless this Remarketing Agreement has been previously terminated pursuant to the terms hereof and subject to Section 6(b) below, Banc of America Securities LLC shall act as exclusive Remarketing Agent with respect to the offer and sale of the Series 2005A Bonds in the secondary market on the terms and conditions herein and in the Indenture contained at all times.

Section 3. ***Remarketing of Series 2005A Bonds*****.**

(a) The Remarketing Agent hereby agrees to perform the duties and obligations, and only such duties and obligations, as are expressly imposed upon it as Remarketing Agent herein and under the Indenture and, except as otherwise provided in and subject to the limitations set forth in the Indenture, agrees to use its reasonable best efforts to remarket the Series 2005A Bonds as set forth in the Indenture, as agent and not as principal, to investors, each of which is an institutional investor or other entity or person which the Remarketing Agent has reason to believe to be accustomed to purchasing debt securities in a minimum denomination of $100,000. The Remarketing Agent acknowledges that the Series 2005A Bonds have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “1933 Act”), or any state securities commission in reliance on exemptions from such registration and covenants and agrees in performing its duties hereunder to comply in all respects with, and to take no actions which would contravene, the 1933 Act or the Blue Sky laws of any state.

It is understood and agreed upon by the parties hereto that the Remarketing Agent is not acting as principal insofar as the purchase of Series 2005A Bonds is concerned, and is only obligated to use its reasonable best efforts to remarket the Series 2005A Bonds. The Remarketing Agent is not and shall not be deemed to be acting as an underwriter for the Series 2005A Bonds and is in no way obligated hereunder to advance its own funds to purchase the Series 2005A Bonds. The foregoing shall in no way be deemed to limit the responsibilities and obligations of the Bank to advance funds under the Letter of Credit pursuant to the terms thereof.

(b) The Remarketing Agent shall have no duty to act hereunder to the extent the Remarketing Agent is not required to perform its obligations under the Indenture and shall have no duty to act under the Indenture to the extent it is not required to perform its obligations hereunder. The Remarketing Agent may for its own account or as broker or agent for others deal in Series 2005A Bonds and may do anything any other Bondholder may do to the same extent as if the Remarketing Agent were not serving as such. The Remarketing Agent may execute and perform any of its duties hereunder or under the Indenture through agents, attorneys, employees or co-remarketing agents and shall not be responsible for the misconduct or negligence of any agent, attorney, employee or co-remarketing agent appointed with due care.

(c) The Remarketing Agent shall not be required to remarket any Series 2005A Bonds if, subsequent to their date of issuance:

(i) Any representation of the Issuer made in the Bond Purchase Agreement, or representation or warranty of the Company, made or incorporated by reference herein shall prove to have been untrue, incorrect, incomplete or misleading in any material respect and, in the reasonable opinion of the Remarketing Agent, the marketability of the Series 2005A Bonds is materially and adversely affected thereby;

(ii) A default by the Company in the observance or performance of any covenant or agreement contained in Section 5 or Section 11 of this Remarketing Agreement shall have occurred and be continuing;

(iii) A default by the Company in the observance or performance of any material covenant or agreement contained in this Remarketing Agreement (other than those specified in Section 3(c)(ii) above) shall have occurred and be continuing and, in the reasonable opinion of the Remarketing Agent, the marketability of the Series 2005A Bonds is materially and adversely affected thereby;

(iv) Any legislation, ordinance, rule or regulation shall have been enacted by any governmental body, department or agency of the State of New Mexico or any decision by any court of competent jurisdiction within the State of New Mexico shall have been rendered that in the reasonable opinion of the Remarketing Agent materially and adversely affects the marketability of the Series 2005A Bonds;

(v) Any legislation shall have been enacted, any decision by a court of the United States shall have been rendered or any stop order, ruling, regulation or official statement by or on behalf of the Securities and Exchange Commission or other governmental agency shall have been made to the effect that the Series 2005A Bonds or the Indenture are not exempt from registration, qualification or other requirements of the 1933 Act, the Trust Indenture Act of 1939, as amended or other federal securities laws;

(vi) Any legislation shall have been enacted, any decision by a court of the United States shall have been rendered or any ruling, regulation or official statement by or on behalf of, the Comptroller of the Currency or the Federal Reserve Board or other governmental agency shall have been made that would render the Remarketing Agent's activities hereunder illegal or subject it to registration or licensing to which it is not now subject;

(vii) Any event shall have occurred or condition shall exist (including without limitation insufficient coverage under the Letter of Credit of principal, purchase price or interest payable on the Series 2005A Bonds while in any particular Interest Rate mode as may be required by the Indenture, any material adverse change in the financial condition of the Bank, the expiration of the Letter of Credit or the issuance of a Substitute Letter of Credit) that, in the reasonable opinion of the Remarketing Agent, materially and adversely affects the marketability of the Series 2005A Bonds or the liquidity or security therefor;

(viii) Any event shall have occurred, or information shall have become known which, in the reasonable judgment of the Remarketing Agent, makes untrue in any material adverse respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; or

(ix) In the reasonable opinion of the Remarketing Agent the marketability of the Series 2005A Bonds has been affected because (A) additional material restrictions not in force as of their date of issuance shall have been imposed upon trading in securities generally by any governmental authority or by a national securities exchange, (B) any Event of Default exists under the Indenture, (C) a general banking moratorium shall have been established by federal or New Mexico authorities, or (D) war or an outbreak of hostilities or other national or international calamity or crisis shall have occurred or escalated to such a magnitude as in the reasonable opinion of the Remarketing Agent to have a materially adverse effect on the marketability of the Series 2005A Bonds.

Section 4. ***Determination of Interest Rates*****.** The Remarketing Agent shall determine the Interest Rate on the Series 2005A Bonds in accordance with, and shall provide notice thereof to the parties in the manner and at the times set forth in, Section 2.02 of the Indenture.

Section 5. ***Remarketing Agent Compensation*****.** While the Series 2005A Bonds bear interest at the Weekly Rate or a Flexible Rate, the Company shall pay the Remarketing Agent on the first day of each January, April, July and October, commencing January 1, 2006, and on the date of the occurrence of any of the events referred to in clause (b) of the next sentence, for services rendered by the Remarketing Agent under the Indenture and hereunder during the immediately preceding up to three-month period, a remarketing fee equal to one-tenth of one percent (0.1%) per annum of the average aggregate principal amount of Series 2005A Bonds outstanding during the period for which such fee is payable based on the actual number of days in the period for which such fee is payable over a 365 or 366-day year, as the case may be. The remarketing fee shall be pro-rated (a) for the period from the Date of Issuance through December 31, 2005, and (b) for any period of less than three months from the most recent quarterly payment date to which the fee has been paid during which (i) the Remarketing Agent resigns or is removed or (ii) all of the Series 2005A Bonds are redeemed in full, based upon the number of days during such period that any of the Series 2005A Bonds were outstanding or the Remarketing Agent was serving hereunder, as the case may be. The Remarketing Agent reserves the right periodically to review and possibly revise the remarketing fee payable by the Company hereunder based on prevailing market conditions related to the remarketing of the Series 2005A Bonds and other comparable securities; provided that any such revised remarketing fee shall not be payable by the Company unless agreed to in writing by the Company and the Remarketing Agent. The Company also agrees to pay or reimburse the Remarketing Agent for all reasonable out-of-pocket costs and expenses incurred by it in connection herewith, including, without limitation, reasonable fees and disbursements of counsel to the Remarketing Agent.

Section 6. ***Resignation or Removal of Remarketing Agent*****.**

(a) The Remarketing Agent may resign and be discharged of its duties and obligations hereunder and under the Indenture and may be removed of all or a portion of its duties and obligations hereunder and under the Indenture in the manner and at the times specified in Section 9.12 of the Indenture. Upon the resignation or removal of the Remarketing Agent, the Company shall cause a successor Remarketing Agent to be appointed in accordance with Section 9.12 of the Indenture.

(b) Notwithstanding the foregoing, with prior written notice to (but without the consent of) the Issuer, the Company, the Trustee, the Fiscal Agent, the Bank and the Bondholders, the Remarketing Agent may assign or transfer any or all of its rights and obligations as remarketing agent hereunder and under the Indenture to any other direct or indirect wholly-owned subsidiary of Bank of America Corporation so long as such subsidiary meets the qualifications for a Remarketing Agent set forth in the Indenture and is otherwise permitted to perform such obligations under all applicable federal and state banking and securities laws, rules and regulations.

Section 7. ***Reserved*****.**

Section 8. ***Representations and Warranties of the Company*****.** The Company represents and warrants to the Remarketing Agent that each of the representations and warranties of the Company contained in the Bond Purchase Agreement, the Lease Agreement and the Credit Agreement is true and correct as of the date hereof and is hereby made to the Remarketing Agent as if set forth herein, and the Company is in compliance with all terms, covenants and conditions of the Bond Purchase Agreement and each other agreement or document relating to the Series 2005A Bonds to which it is a party.

Section 9. ***Disclosure Covenants*****.**

(a) In the event that the Remarketing Agent, in connection with the remarketing of the Series 2005A Bonds, is required to comply with Rule 15c2-12, as amended (the "Rule"), of the Securities and Exchange Commission, the Company agrees to take all actions as are necessary at that time to comply with the provisions of the Rule.

(b) The Company hereby approves the use and distribution of the Official Statement (including any amendments, modifications and supplements thereto) and all exhibits and appendices thereto and documents incorporated therein by reference and all other documents provided by the Company to the Remarketing Agent for use in the remarketing of the Series 2005A Bonds. The Company agrees to cause the Remarketing Agent to be furnished with as many copies of the Official Statement and all exhibits and appendices thereto and documents incorporated by reference therein as the Remarketing Agent may reasonably request and the Company agrees to furnish the Remarketing Agent with such other information as the Company deems necessary or as the Remarketing Agent may reasonably request from time to time in connection with the remarketing of the Series 2005A Bonds in accordance with the terms hereof. If at any time during the term of this Remarketing Agreement any event or condition known to the Company relating to or affecting the Company, the use of proceeds of the Series 2005A Bonds, the Project or the Series 2005A Bonds or any document or agreement related to the Series 2005A Bonds or executed in connection with the issuance or original purchase and sale thereof shall occur which might affect the accuracy or completeness of any statement of a material fact contained in the Official Statement or any exhibit or appendix thereto or document incorporated by reference therein or any other materials or information furnished by the Company to the Remarketing Agent in connection with the remarketing or sale of any Bond hereunder, the Company (i) shall promptly notify the Remarketing Agent in writing of the circumstances and details of such event or condition, and (ii) shall assist the Remarketing Agent in the preparation by the Remarketing Agent, at the Company's sole expense, of an appropriate amendment or supplement to the Official Statement so that the Official Statement, as amended, will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company further agrees, at its cost and expense, to amend or supplement the Official Statement with the Remarketing Agent's assistance whenever requested by the Remarketing Agent when, in the reasonable judgment of the Remarketing Agent, such amendment or supplementation is required in order to offer and sell the Series 2005A Bonds in accordance with federal and any applicable state securities laws.

Section 10. ***Additional Covenants*****.** The Company will cooperate fully with, and will pay all costs and reasonable expenses incurred by, the Remarketing Agent (a) in obtaining and maintaining a rating on the Series 2005A Bonds by one of the Rating Agencies so long as such a rating is reasonably deemed necessary by the Remarketing Agent in its sole discretion in order to remarket the Series 2005A Bonds at the lowest interest cost to the Company and (b) in the qualification of the Series 2005A Bonds for offering and sale and the determination of the eligibility of the Series 2005A Bonds for investment under the laws of such jurisdictions as the Remarketing Agent shall designate and will use its reasonable best efforts to continue such qualification in effect so long as required for the remarketing of the Series 2005A Bonds by the Remarketing Agent, provided that the Company shall not be required to take any action that would subject it to general service of process or to qualify as a foreign corporation in any jurisdiction where it is not now so subject.

Section 11. ***Indemnification*****.** The Remarketing Agent, and any member, director, officer, official, employee or agent of the Remarketing Agent, and each person who controls the Remarketing Agent within the meaning of Section 15 of the 1933 Act, or Section 20 of the Securities Exchange Act of 1934, as amended (collectively, the "Indemnified Parties"), shall be entitled to all rights and benefits provided to the Underwriter under Section 10 of the Bond Purchase Agreement as if the Indemnified Parties were specifically named therein, subject to any conditions and qualifications thereunder. Subject to any conditions and qualifications under Section 10 of the Bond Purchase Agreement, the Company agrees to indemnify any Indemnified Party for, and to hold it harmless against, any loss, liability, claim (whether or not valid or meritorious), damages, costs or expense (including, without limitation, counsel fees and disbursements) which any Indemnified Party may incur arising out of or in connection with the Indemnified Party's performance of its obligations pursuant to this Remarketing Agreement or the Indenture, except to the extent caused by the Indemnified Party's gross negligence, willful misconduct or bad faith.

Section 12. ***Failures by Purchasers*****.** The Remarketing Agent shall not be liable to the Issuer, the Company or the Bank on account of the failure of any person to whom the Remarketing Agent has remarketed a Series 2005A Bond to pay for such Series 2005A Bond or deliver any document in respect of such remarketing. If there

is such a failure, the Remarketing Agent will use its reasonable best efforts to remarket such Series 2005A Bond to a substitute purchaser on the terms set forth herein and in the Indenture.

Section 13. ***Notices*****.**

(a) Any notice, request, direction, designation, consent, acknowledgment, certification, appointment, waiver or other communication required or permitted hereunder must be in writing except as expressly provided otherwise.

(b) Except as otherwise provided herein, any notice or other communication shall be sufficiently given and deemed given when (i) delivered by hand, (ii) sent by a nationally recognized overnight courier, (iii) mailed by first-class mail, postage prepaid, or, (iv) unless specifically prohibited under the terms of the Indenture, by telecopy under the provisions of this Remarketing Agreement, addressed to the parties hereto, the Issuer, the Bank, the Trustee or the Fiscal Agent at the addresses specified in Section 12.01(b) of the Indenture.

(c) Each of the parties hereto, the Issuer, the Bank, the Trustee and the Fiscal Agent may, by written notice given hereunder to the others, designate any further or different addresses to which or means by which, subsequent notices, certificates, requests or other communications shall be sent.

Section 14. ***Governing Law*****. THIS REMARKETING AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW MEXICO APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE.**

Section 15. ***Counterparts*****.** This Remarketing Agreement may be executed in two counterparts, each of which shall be an original and both of which, when taken together, shall constitute but one and the same instrument.

Section 16. ***Binding Effect*****.** This Remarketing Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, except that the Company may not assign any of its rights or obligations hereunder without the consent of the Remarketing Agent.

Section 17. ***Termination*****.** This Remarketing Agreement shall terminate (except as to rights to any fees, expenses and costs payable and rights to indemnity or contribution, which shall survive any termination) on the earlier to occur of (a) the removal or resignation of the Remarketing Agent pursuant to Section 6 hereof or (b) payment in full of all of the Series 2005A Bonds.

Section 18. ***Miscellaneous*****.**

(a) Nothing herein shall be construed to make either party hereto an employee of the other or to establish any fiduciary relationship between the Company and the Remarketing Agent.

(b) This Remarketing Agreement may be amended from time to time only by an instrument in writing executed by both parties hereto.

(c) The headings contained herein are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Remarketing Agreement.

(d) If any one or more of the covenants, provisions or agreements contained in this Remarketing Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity of such covenants, provisions and agreements shall in no way affect the validity or effectiveness of the remainder of this Remarketing Agreement, and this Remarketing Agreement shall continue in full force to the fullest extent permitted by law.

(e) All of the representations, warranties and covenants made in this Remarketing Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of either party hereto, (ii) delivery of and any payment for any Series 2005A Bonds hereunder, or (iii) termination or cancellation of this Remarketing Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Remarketing Agreement to be duly executed in their respective names by their duly authorized officers as of the day and year first above written.

TEMPUR PRODUCTION USA, INC.

By: /s/ WILLIAM H. POCHE
Name: **William H. Poche**
Title: **Assistant Treasurer**

BANC OF AMERICA SECURITIES LLC

By: /s/ W. JOHN ECKEL, JR.
Name: **W. John Eckel, Jr.**
Title: **Principal**

Exhibit 10.7

Prepared By/Return To:

Lea Stromire Johnson, Esquire
Moore & Van Allen, PLLC
100 N. Tryon Street, Floor 47
Charlotte, NC 28202-4003

MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND FIXTURE FILING

by

Tempur Production USA, Inc.,
a Virginia corporation,
as grantor,

and

Bernalillo County, New Mexico,
as Issuer,

to and in favor of

Bank of America, N.A.,
a national banking association,
Collateral Agent,
as beneficiary

(This document serves as a Fixture Filing under Section 55-9-502 of the New Mexico Uniform Commercial Code)

Company's Organizational Identification Number is: 0538906-9

MORTGAGE, ASSIGNMENT,
SECURITY AGREEMENT AND FIXTURE FILING

This Mortgage, Assignment, Security Agreement and Fixture Filing is dated as of the day of October, 2005, by Tempur Production USA, Inc., a Virginia corporation (herein referred to as the "*Company*"), whose address is 1713 Jaggie Fox Way, Lexington, Kentucky 40511, and Bernalillo County, New Mexico (herein referred to as the "*Issuer*"), whose address is One Civic Plaza NW, Albuquerque, New Mexico 87102, for the benefit of Bank of America, N.A., a national banking association, as Collateral Agent for the holders of the Secured Obligations (herein referred to as the "*Collateral Agent*"), whose address is 231 LaSalle Street, IL1-231-08-30, Chicago, Illinois 60604.

Recitals

A. The Company is party to that certain Credit Agreement dated as of October 18, 2005 (as amended, modified, supplemented, extended, renewed and in effect from time to time, the "*Credit Agreement*") among the Company and certain affiliates, as borrowers, Tempur-Pedic International Inc., a Delaware corporation, and certain affiliates and subsidiaries, as guarantors, the lenders identified therein and Bank of America, N.A., as administrative agent, and pursuant to which to which a direct pay letter of credit will be issued (as hereafter may be modified, increased, extended, or renewed and in effect from time to time, the "*Letter of Credit*") in support of the Issuer's Industrial Revenue Bonds (Tempur Production USA, Inc. Project), Taxable Variable Rate Series 2005A (the "*Bonds*") in an aggregate principal amount of up to $75 million;

B. The Company and the Issuer have entered into that certain Lease Agreement dated as of September 1, 2005 (as hereafter may be modified, supplemented, extended or renewed and in effect from time to time, the "*Issuer Lease Agreement*"), pursuant to which Lease Agreement the Issuer has leased the Project (as therein defined) to the Company; and

C. Execution and delivery of this mortgage instrument is a condition to the issuance of the Letter of Credit under the Credit Agreement.

Grants and Agreements

Now, therefore, in order to induce issuance of the Letter of Credit, the Company and the Issuer, as applicable, agree as follows:

Article I

Definitions.

As used in this Mortgage, the terms defined in the Preamble hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings hereinafter specified. Capitalized terms used but not otherwise defined herein shall have the meanings provided in the Credit Agreement.

"*Accessories*" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by the Company and/or the Issuer, which are now or hereafter attached to or situated in, on or about the Land or Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"*Accounts*" means all accounts of the Company within the meaning of the Uniform Commercial Code of the State, derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon.

"*Additions*" means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.

"*Bonds*" shall have the meaning given to it in the Recitals to this Mortgage.

"*Claim*" means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

"*Collateral Agent*" means the Collateral Agent and its successors and assigns.

"*Condemnation*" means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

"*Condemnation Awards*" means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

"*Contract of Sale*" means any contract for the sale of all or any part of the Property or any interest therein, whether now in existence or hereafter executed.

"*Default*" means an event or circumstance which, with the giving of Notice or lapse of time, or both, would constitute an Event of Default under the provisions of this Mortgage.

"*Design and Construction Documents*" means, collectively, (a) all contracts for services to be rendered, work to be performed or materials to be supplied in the development of the Land or the construction or repair of Improvements, including all agreements with architects, engineers or contractors for such services, work or materials; (b) all plans, drawings and specifications for the development of the Land or the construction or repair of Improvements; (c) all permits, licenses, variances and other rights or approvals issued by or obtained from any Governmental Authority or other Person in connection with the development of the Land or the construction or repair of Improvements; and (d) all amendments of or supplements to any of the foregoing.

"*Encumbrance*" means any Lien, easement, right of way, roadway (public or private), condition, covenant or restriction, Lease or other matter of any nature that would affect title to the Property.

"*Event of Default*" means an event or circumstance specified in *Article VI* and the continuance of such event or circumstance beyond the applicable grace and/or cure periods therefor, if any, set forth in *Article VI*.

"*Expenses*" means all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) in connection with the issuance, funding, administration or modification of the Letter of Credit, in negotiating or entering into any "workout" of this Mortgage or any of the other Related Documents, or in exercising or enforcing any rights, powers and remedies provided in this Mortgage or any of the other Related Documents, including reasonable attorneys' fees, court costs, receiver's fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling, the Property and a reasonable fee to any special master.

"*Governmental Authority*" means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

"*Improvements*" means all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, together with any on-site improvements and off-site improvements in any way used or to be used in connection with the use, enjoyment, occupancy or operation of the Land.

"*Indenture*" means that certain Trust Indenture dated as September 1, 2005 between the Issuer and The Bank of New York Trust Company, N.A., as Trustee, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"*Insurance Proceeds*" means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

"*Issuer*" means Bernalillo County, New Mexico.

"*Issuer Estate*" means the fee interest and other right, title and interest in the Property now owned or hereafter acquired by the Issuer.

"*Issuer Lease Agreement*" has the meaning given to it in the Recitals to this Mortgage.

"*Land*" means the real property described in *Exhibit A* attached hereto and made a part hereof.

"*Laws*" means all federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

"*Leasehold Estate*" means the leasehold estate and all other right, title and interest in the Property now owned or hereafter acquired by the Company pursuant to the Issuer Lease Agreement or otherwise.

"*Leases*" means all subleases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties thereof, including any cash or security deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or security is to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due thereunder. The Issuer Lease Agreement is not one of the Leases for purposes of this Mortgage.

"*Letter of Credit*" has the meaning given to it in the Recitals to this Mortgage.

"*Lien*" means any mortgage, deed of trust, pledge, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

"*Mortgage*" means this Mortgage, Assignment, Security Agreement and Fixture Filing, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"*Notice*" means a notice, request, consent, demand or other communication given in accordance with the provisions of *Section 9.8* of this Mortgage.

"*Permitted Encumbrances*" means (a) any matters set forth in any policy of title insurance issued to the Collateral Agent and insuring the interest of the Collateral Agent and the holders of the Secured Obligations secured hereby in the Property which are acceptable to the Collateral Agent as of the date hereof, including, without limitation, the Issuer Lease Agreement, (b) the Liens and interests of this Mortgage, (c) other Encumbrances permitted under the Credit Agreement and (d) any other Encumbrance that the Collateral Agent shall expressly approve in its sole and absolute discretion, as evidenced by a "marked-up" commitment for title insurance initialed on behalf of the Collateral Agent.

"*Person*" means an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any Governmental Authority or any other entity.

"*Personalty*" means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which the Company and/or the Issuer now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Mortgage, and the Collateral Agent shall have no responsibility for the performance of the Company's and/or the Issuer's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof; (e) all insurance policies held by the Company and/or the Issuer with respect to the Property or the Company's operation thereof; and (f) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of the Company with the Collateral Agent or Lenders under the Credit Agreement related to the Property, including any such deposit account from which the Company may from time to time authorize the Collateral Agent to debit and/or credit payments due with respect to the Letter of Credit; together with all Additions to and Proceeds of all of the foregoing.

"*Proceeds*" when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

"*Project*" has the meaning given to it in the Issuer Lease Agreement.

"*Property*" means the Real Property and the Personalty, including, without limitation, the Project, and all other rights, interests and benefits of every kind and character which the Company and/or the Issuer now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all Condemnation Awards, all Proceeds, and all of the Company's right, title and interest in and to all Design and Construction Contracts and all Contracts of Sale.

"*Property Assessments*" means all Taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner's association assessments and charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof, or upon any Leases or any Rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

"*Real Property*" means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes,

strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by the Company and/or the Issuer and belonging or appertaining to the Land or Improvements; (b) all Claims whatsoever of the Company and/or the Issuer with respect to the Land or Improvements, either in Law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of the Company and/or the Issuer in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

"*Related Documents*" means this Mortgage, the Credit Agreement and any and all other documents which the Company or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Secured Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"*Rents*" means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

"*Secured Obligations*" means the Obligations and all costs and expenses incurred in connection with enforcement and collection of the Obligations, including reasonable attorneys' fees and disbursements.

"*State*" means the State of New Mexico.

"*Taxes*" means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on the Company or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

"*Transfer*" means any direct or indirect sale, assignment, conveyance or transfer, including any Contract of Sale and any other contract or agreement to sell, assign, convey or transfer, whether made voluntarily or by operation of Law or otherwise, and whether made with or without consideration.

"*Trustee*" means the trustee under the Indenture at the time in question.

Article II

Granting Clauses; Conditions of Grant.

Section 2.1 *Conveyances and Security Interests*.

(a) The total Secured Obligations secured by this Mortgage, including, without limitation, amounts the Collateral Agent in its discretion may loan to the Company, together with all interest thereon, may increase or decrease from time to time but the maximum indebtedness outstanding at any one time shall not exceed SIXTY-SEVEN MILLION ONE HUNDRED SEVENTY-THREE THOUSAND THREE HUNDRED THIRTY-SEVEN DOLLARS ($67,173,337).

(b) In order to secure the prompt payment and performance of the Secured Obligations, the Company (i) grants, bargains, sells and conveys the Issuer Lease Agreement, the Leasehold Estate and all of the Company's other right, title and interest, whether now owned or hereafter acquired, in the Real Property unto the Collateral Agent, with mortgage covenants and upon the statutory mortgage condition, to have and to hold the

Issuer Lease Agreement, the Leasehold Estate and all of the Company's other right, title and interest, whether now owned or hereafter acquired, in Real Property unto the Collateral Agent forever; provided that the Company may retain possession of the Real Property until the occurrence of an Event of Default; (ii) grants to the Collateral Agent a security interest in the Issuer Lease Agreement, the Leasehold Estate and all of the Company's other right, title and interest, whether now owned or hereafter acquired, in Personalty; (iii) assigns to the Collateral Agent, and grants to the Collateral Agent a security interest in, all right, title and interests of the Company in all Condemnation Awards and all Insurance Proceeds; and (iv) assigns to the Collateral Agent, and grants to the Collateral Agent a security interest in, all of the Company's right, title and interest in, but not any of the Company's obligations or liabilities under, all Design and Construction Documents and all Contracts of Sale.

(c) In order to secure the prompt payment and performance of the Secured Obligations, the Issuer (i) grants, bargains, sells and conveys the Issuer Estate in the Real Property unto the Collateral Agent, with mortgage covenants and upon the statutory mortgage condition, to have and to hold forever, (ii) grants to the Collateral Agent a security interest in the Issuer Estate in the Personalty; and (iii) assigns to the Collateral Agent, and grants to the Collateral Agent a security interest in, all right, title and interest of the Issuer, as owner of the Issuer Estate, in all Condemnation Awards and all Insurance Proceeds. The Issuer acknowledges and agrees that the Issuer intends that this Mortgage shall encumber all of its right, title and interest, whether now owned or hereafter acquired, in the Property.

(d) All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Reimbursement Agreement or any Bank Swap Contract which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

Section 2.2 *Absolute Assignment of Leases and Rents*.

In consideration of the issuance of the Letter of Credit under the Credit Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company absolutely and unconditionally assigns the Leases and Rents to the Collateral Agent. This assignment is, and is intended to be, an unconditional, absolute and present assignment from the Company to the Collateral Agent of all of the Company's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist, however, and so long as the Company is not in default in the performance of any obligation, covenant or agreement contained in the Leases, the Company shall have a license (which license shall terminate automatically and without notice upon the occurrence of an Event of Default or a default by the Company under the Leases) to collect, but not prior to accrual, all Rents. Provided no Event of Default has occurred, the Company agrees to collect and hold all Rents in trust for the Collateral Agent and to use the Rents for the payment of the cost of operating and maintaining the Property and for the payment of the other Secured Obligations before using the Rents for any other purpose.

Section 2.3 *Security Agreement, Fixture Filing and Financing Statement*.

This Mortgage creates a security interest in the Personalty, and, to the extent the Personalty is not real property, this Mortgage constitutes a security agreement from the Company and the Issuer to the Collateral Agent under the Uniform Commercial Code of the State. In addition to all of its other rights under this Mortgage and otherwise, the Collateral Agent shall have all of the rights of a secured party under the Uniform Commercial Code of the State, as in effect from time to time, or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable Law. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including such fixtures) is situated. This Mortgage shall also be effective as a financing statement with respect to any other Property as to

which a security interest may be perfected by the filing of a financing statement and may be filed as such in any appropriate filing or recording office. The respective mailing addresses of the Company, the Issuer and the Collateral Agent are set forth in the opening paragraph of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or any other financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section. the Company and the Issuer hereby irrevocably authorize the Collateral Agent at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable Law, reasonably required by the Collateral Agent to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage.

Section 2.4 *Release of Mortgage and Termination of Assignments and Financing Statements*.

If and when the Letter of Credit has expired or been terminated and the Company has paid and performed all of the Secured Obligations, and no further advances are to be made under the Related Documents, the Collateral Agent will provide a release of the Property from the lien of this Mortgage and termination statements for filed financing statements, if any, to the Company. The Company shall be responsible for the recordation of such release and the payment of any recording and filing costs. Upon the recording of such release and the filing of such termination statements, the absolute assignments set forth in *Section 2.2* shall automatically terminate and become null and void.

Article III

Representations and Warranties.

The Company makes the following representations and warranties:

Section 3.1 *Title to Real Property*.

The Company (a) is the lessee under the Issuer Lease Agreement, (b) owns a good and marketable title to the Leasehold Estate in all of the beneficial and equitable interest in and to the Real Property pursuant to the Issuer Lease Agreement, and (c) is lawfully seized and possessed of a Leasehold Estate to the Real Property pursuant to the Issuer Lease Agreement. The Company has the right and authority to convey the Issuer Lease Agreement and a Leasehold Estate in the Real Property and does hereby convey the Issuer Lease Agreement and a Leasehold Estate in the Real Property with general warranty. The Real Property is subject to no Encumbrances other than the Permitted Encumbrances.

Section 3.2 *Title to Other Property*.

The Company has good title to the Leasehold Estate in the Personalty covered by the Issuer Lease Agreement and its other right, title and interest in the other Personalty, including, without limitation, a Leasehold Estate pursuant to the Issuer Lease Agreement in certain fixtures and equipment and an outright ownership interest in other fixtures and equipment. The Personalty is not subject to any Encumbrance other than the Permitted Encumbrances. None of the Leases, Rents, Design and Construction Documents, Contracts of Sale or Refinancing Commitments are subject to any Encumbrance other than the Permitted Encumbrances.

Section 3.3 *Property Assessments*.

The Real Property is assessed for purposes of Property Assessments as a separate and distinct parcel from any other property, such that the Real Property shall never become subject to the Lien of any Property Assessments levied or assessed against any property other than the Real Property.

Section 3.4 *Independence of the Real Property*.

No buildings or other improvements on property not covered by this Mortgage rely on the Real Property or any interest therein to fulfill any requirement of any Governmental Authority for the existence of such property, building or improvements; and none of the Real Property relies, or will rely, on any property not covered by this Mortgage or any interest therein to fulfill any requirement of any Governmental Authority. The Real Property has been properly subdivided from all other property in accordance with the requirements of any applicable Governmental Authorities.

Section 3.5 *Existing Improvements*.

The existing Improvements, if any, were constructed, and are being used and maintained, in accordance with all applicable Laws, including zoning Laws.

Article IV

Affirmative Covenants.

Section 4.1 [Intentionally Left Blank.]

Section 4.2 *Property Assessments; Documentary Taxes*.

The Company (a) will promptly pay in full and discharge all Property Assessments, and (b) will furnish to the Collateral Agent, upon demand, the receipted bills for such Property Assessments prior to the day upon which the same shall become delinquent. Property Assessments shall be considered delinquent as of the first day any interest or penalty commences to accrue thereon. The Company will promptly pay all stamp, documentary, recordation, transfer and intangible taxes and all other taxes that may from time to time be required to be paid with respect to the Letter of Credit, the Credit Agreement, this Mortgage or any of the other Related Documents.

Section 4.3 *Permitted Contests*.

The Company shall not be required to pay any of the Property Assessments, or to comply with any Law, so long as the Company shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to prevent the collection of, or other realization upon, such Property Assessments or enforcement of the Law so contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, (c) the Collateral Agent is not subjected to any Claim as a result of such contest, and (d) the Company provides assurances satisfactory to the Collateral Agent (including the establishment of an appropriate reserve account with the Collateral Agent) of its ability to pay such Property Assessments or comply with such Law in the event the Company is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and the Company shall indemnify and save the Collateral Agent harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, the Company shall comply with such Law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

Section 4.4 [Intentionally Left Blank.]

Section 4.5 [Intentionally Left Blank.]

Section 4.6 *Compliance with Issuer Lease Agreement; Additions to Security*.

The Company shall comply with and enforce the Issuer Lease Agreement and keep the Issuer Lease Agreement in full force and effect. All right, title and interest of the Company in and to all Improvements and

Additions hereafter constructed or placed on the Property and in and to any Accessories hereafter acquired shall, without any further mortgage, conveyance, assignment or other act by the Company, become subject to the Lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Company and specifically described in the granting clauses hereof. The Company agrees, however, to execute and deliver to the Collateral Agent such further documents as may be required by the terms of the Credit Agreement and the other Related Documents.

Section 4.7 *Subrogation*.

To the extent permitted by Law, the Collateral Agent shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by the Collateral Agent whether or not from the proceeds of the Secured Obligations. This Section shall not be deemed or construed, however, to obligate the Collateral Agent to pay or discharge any Lien.

Section 4.8 *Leases*.

(a) Except as expressly permitted in the Credit Agreement, the Company shall not enter into any Lease with respect to all or any portion of the Property without the prior written consent of the Collateral Agent.

(b) The Collateral Agent shall not be obligated to perform or discharge any obligation of the Company under any Lease. The assignment of Leases provided for in this Mortgage in no manner places on the Collateral Agent any responsibility for (i) the control, care, management or repair of the Property, (ii) the carrying out of any of the terms and conditions of the Leases, (iii) any waste committed on the Property, or (iv) any dangerous or defective condition on the Property (whether known or unknown).

(c) No approval of any Lease by the Collateral Agent shall be for any purpose other than to protect the Collateral Agent's security and to preserve the Collateral Agent's rights under the Related Documents, and no such approval shall result in a waiver of a Default or Event of Default.

Article V

Negative Covenants.

Section 5.1 *Encumbrances; Issuer Lease Agreement*.

The Company will not permit any of the Property to become subject to any Encumbrance other than the Permitted Encumbrances. Within thirty (30) days after the filing of any mechanic's lien or other Lien or Encumbrance against the Property, the Company will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as the Collateral Agent's security has been protected by the filing of a bond or otherwise in a manner satisfactory to the Collateral Agent in its sole and absolute discretion, the Company shall have the right to contest in good faith any Claim, Lien or Encumbrance, provided that the Company does so diligently and without prejudice to the Collateral Agent or delay in completing construction of the Improvements. The Company shall give the Collateral Agent Notice of any default under any Lien and Notice of any foreclosure or threat of foreclosure with respect to any of the Property. The Company shall not modify, amend or terminate the Issuer Lease Agreement without the Collateral Agent's prior written consent.

Section 5.2 *Transfer of the Property*.

The Company will not Transfer, or contract to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for certain Transfers of the Accessories expressly permitted in this Mortgage). Except as may be permitted in the Credit Agreement, Transfers of equity interests in the Company shall be deemed to be a prohibited Transfer of the Property.

Section 5.3 *Removal, Demolition or Alteration of Accessories and Improvements*.

Except to the extent permitted by the following sentence, no Improvements or Accessories shall be removed, demolished or materially altered without the prior written consent of the Collateral Agent. The Company may remove and dispose of, free from the Lien of this Mortgage, such Accessories as from time to time become worn out or obsolete, provided that, either (a) at the time of, or prior to, such removal, any such Accessories are replaced with other Accessories which are free from Liens other than Permitted Encumbrances and have a value at least equal to that of the replaced Accessories (and by such removal and replacement the Company shall be deemed to have subjected such Accessories to the Lien of this Mortgage), or (b) such Accessories are sold at fair market value for cash and, unless the Collateral Agent otherwise agrees, the Company causes the principal amount of Bonds closest in amount to the net cash proceeds received from such redemption to be redeemed and the net cash proceeds therefrom will be used to reimburse amounts drawn on the Letter of Credit in connection with such redemption.

Section 5.4 *Additional Improvements*.

The Company will not construct any Improvements other than those presently on the Land and those described in the Credit Agreement without the prior written consent of the Collateral Agent. The Company will complete and pay for, within a reasonable time, any Improvements which the Company is permitted to construct on the Land. The Company will construct and erect any permitted Improvements (a) strictly in accordance with all applicable Laws and any private restrictive covenants, (b) entirely on lots or parcels of the Land, (c) so as not to encroach upon any easement or right of way or upon the land of others, and (d) wholly within any building restriction and setback lines applicable to the Land.

Section 5.5 *Restrictive Covenants, Zoning, etc*.

Without the prior written consent of the Collateral Agent, the Company will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Property. The Company (a) will promptly perform and observe, and cause to be performed and observed, all of the terms and conditions of all agreements affecting the Property, and (b) will do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

Article VI

Events of Default.

The occurrence or happening, from time to time, of any one or more of the following shall constitute an Event of Default under this Mortgage:

Section 6.1 *Covenants and Agreements*.

The failure to perform or observe any covenants or agreements provided herein and such failure shall continue beyond any period of cure or grace as provided in Section 9.01(c) of the Credit Agreement.

Section 6.2 *Event of Default Under Other Related Documents*.

The occurrence of an Event of Default (as defined therein) under the Credit Agreement.

Section. 6.3 *Execution; Attachment*.

Any execution or attachment is levied against any of the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

Article VII

Rights and Remedies.

Upon the happening of any Event of Default, the Collateral Agent shall have the right, in addition to any other rights or remedies available to the Collateral Agent under the Credit Agreement and/or any of the other Related Documents or applicable Law, to exercise any one or more of the following rights, powers or remedies:

Section 7.1 *Acceleration*.

All of the Secured Obligations may be declared immediately due and payable in accordance with the terms of the Credit Agreement and the Collateral Agent may declare or direct the Trustee to declare all of the Secured Obligations to be immediately due and payable and all such Secured Obligations may be accelerated whereupon such Secured Obligations shall become immediately due and payable, without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby waived by the Company).

Section 7.2 *Foreclosure*.

This Mortgage shall be subject to judicial foreclosure and the Property sold in a manner and form prescribed by Law. Any sale made hereunder may be as an entirety or in such parcels as the Collateral Agent may request. In addition, any such sale hereunder may apply to the Leasehold Estate only (subject to the Issuer Lease Agreement) or the entire Property (including, without limitation, the Leasehold Estate and the Issuer Estate) as the Collateral Agent may request. To the extent permitted by applicable Law, any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by Law. If the proceeds of such sale of less than the whole of the Property or all interests therein shall be less than the aggregate of the Secured Obligations, this Mortgage and the lien hereof shall remain in full force and effect as to the unsold portion of the Property or unsold interests in the Property, as applicable, just as though no sale had been made; provided, however, that the Company and the Issuer shall never have any right to require the sale of less than the whole of the Property or all interests therein but the Collateral Agent shall have the right, at its sole election, to request the special master to sell less than the whole of the Property or all interests therein. A sale may cover not only the real property but also the Personalty and other interests which are a part of the Property, or any part thereof or interests therein, as a unit and as a part of a single sale, or the sale may be of any part of the Property separately from the remainder of the Property. After each sale, the special master approved by the court shall make to the purchaser or purchasers at such sale good and sufficient conveyances, conveying the property or interests therein so sold to the purchaser or purchasers, subject to the Permitted Encumbrances (and to such leases and other matters, if any), and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to the special master shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. In the event any sale under this Mortgage is not completed or is defective in the opinion of the Collateral Agent, such sale shall not exhaust the power of sale hereunder and the Collateral Agent shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds or other conveyances given by the special master as to nonpayment of the Secured Obligations or as to the occurrence of any default, or as to the Collateral Agent's having declared all of said Secured Obligations to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, or as to any other act or thing having been duly done by the Collateral Agent shall be taken as prima facie evidence of the truth of the facts so stated and recited.

Section 7.3 *Judicial Action*.

The Collateral Agent shall have the right from time to time to sue the Company for any sums (whether interest, damages for failure to pay principal or any installments thereof, taxes, or any other sums required to be paid under the terms of this Mortgage, as the same become due), without regard to whether or not any of the

other Secured Obligations shall be due, and without prejudice to the right of the Collateral Agent thereafter to enforce any appropriate remedy against the Company, including an action of foreclosure or an action for specific performance, for a Default or Event of Default existing at the time such earlier action was commenced.

Section 7.4 *Collection of Rents*.

Upon the occurrence of an Event of Default, the license granted to the Company to collect the Rents shall be automatically and immediately revoked, without further notice to or demand upon the Company. The Collateral Agent may, but shall not be obligated, to perform any or all obligations of the landlord under any or all of the Leases, and the Collateral Agent may, but shall not be obligated to, exercise and enforce any or all of the Company's rights under the Leases. Without limitation to the generality of the foregoing, the Collateral Agent may notify the tenants under the Leases that all Rents are to be paid to the Collateral Agent, and following such notice all Rents shall be paid directly to the Collateral Agent and not to the Company or any other Person other than as directed by the Collateral Agent, it being understood that a demand by the Collateral Agent on any tenant under the Leases for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to the Collateral Agent without the necessity of further consent by the Company. The Company hereby irrevocably authorizes and directs the tenants under the Lease to pay all Rents to the Collateral Agent instead of to the Company, upon receipt of written notice from the Collateral Agent, without the necessity of any inquiry of the Company and without the necessity of determining the existence or non-existence of an Event of Default. The Company hereby appoints the Collateral Agent as the Company's attorney-in-fact with full power of substitution, which appointment shall take effect upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Secured Obligations, in the Company's name or in the Collateral Agent's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by the Collateral Agent; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which the Collateral Agent may deem necessary or desirable to protect the security for the Secured Obligations. Any Rents received shall be applied first to pay all Expenses and next in reduction of the other Secured Obligations. The Company shall pay, on demand, to the Collateral Agent, the amount of any deficiency between (i) the Rents received by the Collateral Agent, and (ii) all Expenses incurred together with interest thereon as provided in the Credit Agreement and the other Related Documents.

Section 7.5 *Taking Possession or Control of the Property*.

As a matter of right without regard to the adequacy of the security, and to the extent permitted by Law without notice to the Company, or the Issuer or any other Person, the Collateral Agent shall be entitled, upon application to a court of competent jurisdiction, to the immediate appointment of a receiver for all or any part of the Property and the Rents, whether such receivership may be incidental to a proposed sale of the Property or otherwise, and the Company and the Issuer hereby consents to the appointment of such a receiver and agrees that such receiver shall have all of the rights and powers granted to the Collateral Agent pursuant to *Section 7.4*. In addition, to the extent permitted by Law, and with or without the appointment of a receiver, or an application therefor, the Collateral Agent may (a) enter upon, and take possession of (and the Company and the Issuer shall surrender actual possession of), the Property or any part thereof, without notice to the Company, the Issuer or any other Person and without bringing any legal action or proceeding, or, if necessary by force, legal proceedings, ejectment or otherwise, and (b) remove and exclude the Company, the Issuer and their agents and employees therefrom.

Section 7.6 *Management of the Property*.

Upon obtaining possession of the Property or upon the appointment of a receiver as described in *Section 7.5*, the Collateral Agent or the receiver, as the case may be, may, at its sole option, (a) make all necessary or proper repairs and Additions to or upon the Property, (b) operate, maintain, control, make secure and preserve the

Property, and (c) complete the construction of any unfinished Improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary, either in their or its own name or in the name of the Company (the costs of completing such Improvements shall be Expenses secured by this Mortgage and shall accrue interest as provided in the Credit Agreement and the other Related Documents). The Collateral Agent or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for gross negligence or willful misconduct. The exercise of the remedies provided in this Section shall not cure or waive any Event of Default, and the enforcement of such remedies, once commenced, shall continue for so long as the Collateral Agent shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Event of Default.

Section 7.7 *Uniform Commercial Code*.

The Collateral Agent may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Upon the occurrence of any Event of Default, the Company shall assemble all of the Accessories and make the same available within the Improvements. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Mortgage at least ten (10) days before any sale or other disposition of the Personalty. Disposition of the Personalty shall be deemed commercially reasonable if made pursuant to a public sale advertised at least twice in a newspaper of general circulation in the community where the Property is located. It shall be deemed commercially reasonable for the Collateral Agent to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties.

Section 7.8 *Application of Proceeds*.

Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this *Article VII* and any other proceeds received by the Collateral Agent from the exercise of any of its other rights and remedies hereunder or under the other Related Documents shall be applied first to pay all Expenses and next in reduction of the other Secured Obligations as provided in the Credit Agreement.

Section 7.9 *Other Remedies*.

The Collateral Agent shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against the Company provided under the Related Documents or by applicable Laws.

Article VIII

Reserved

Article IX

Miscellaneous.

Section 9.1 *Rights, Powers and Remedies Cumulative*.

Each right, power and remedy of the Collateral Agent as provided for in this Mortgage, or in any of the other Related Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, or in any of the other Related

Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by the Collateral Agent of any or all such other rights, powers or remedies.

Section 9.2 *No Waiver by the Collateral Agent*.

No course of dealing or conduct by or among the Collateral Agent, the Company and/or the Issuer shall be effective to amend, modify or change any provisions of this Mortgage or the other Related Documents to which they are parties. No failure or delay by the Collateral Agent to insist upon the strict performance of any term, covenant or agreement of this Mortgage or of any of the other Related Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude the Collateral Agent from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Secured Obligations the Collateral Agent shall not be deemed to waive the right either to require prompt payment when due of all other Secured Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Secured Obligations. Neither the Company nor any other Person now or hereafter obligated for the payment of the whole or any part of the Secured Obligations shall be relieved of such liability by reason of (a) the failure of the Collateral Agent to comply with any request of the Company, the Issuer or of any other Person to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and the Collateral Agent, or (c) the Collateral Agent's extending the time of payment or modifying the terms of this Mortgage or any of the other Related Documents without first having obtained the consent of the Company, the Issuer or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property and/or the Issuer, the Collateral Agent may release any Person at any time liable for any of the Secured Obligations or any part of the security for the Secured Obligations and may extend the time of payment or otherwise modify the terms of this Mortgage or any of the other Related Documents without in any way impairing or affecting the Lien of this Mortgage or the priority of this Mortgage over any subordinate Lien and/or the Issuer Estate. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Mortgage. The Collateral Agent may resort to the security or collateral described in this Mortgage or any of the other Related Documents in such order and manner as the Collateral Agent may elect in its sole discretion.

Section 9.3 *Waivers and Agreements Regarding Remedies*.

To the full extent the Company and the Issuer may do so, each of the Company and the Issuer hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisement, stay of execution, extension and notice of election to accelerate the Secured Obligations. If this Mortgage is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine (9) months;

(b) waives all rights to a marshalling of the assets of the Company or the Issuer, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of the Collateral Agent under the terms of this Mortgage to a sale of the Property without any prior or different resort for collection, or the right of the Collateral Agent to the payment of the Secured Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure

action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which the Company or the Issuer may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

Section 9.4 *Successors and Assigns*.

All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the Land and shall apply to and bind the successors and assigns of the Company (including any permitted subsequent owner of the Property) and the Issuer, and inure to the benefit of the Collateral Agent and the holders of the Secured Obligations secured hereby, and their successors and assigns.

Section 9.5 No *Warranty by the Collateral Agent*.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by the Company or the Issuer or to be given to the Collateral Agent pursuant to this Mortgage or any of the other Related Documents, the Collateral Agent shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by the Collateral Agent.

Section 9.6 *Amendments*.

This Mortgage may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought and otherwise in accordance with the provisions of the Credit Agreement.

Section 9.7 *Severability*.

In the event any one or more of the provisions of this Mortgage or any of the other Related Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Related Documents operates or would prospectively operate to invalidate this Mortgage or any of the other Related Documents, then and in either of those events, at the option of the Collateral Agent, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Secured Obligations, and the remaining provisions of the Related Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 9.8 *Notices*.

All Notices required or which any party desires to give hereunder or under any other Related Document shall be given and effective in the manner prescribed in the Credit Agreement. The Issuer’s address for Notices shall be as provided in the Indenture. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Mortgage or in any other Related Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

Section 9.9 *Joint and Several Liability*.

If the Company consists of two (2) or more Persons, the term “Company” shall also refer to all Persons signing this Mortgage as the Company, and to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. The Collateral Agent may release, compromise, modify or settle with any of the

Company, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the officers of the Company hereunder or under any other Related Document. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, the Company.

Section 9.10 *Rules of Construction/Construction Mortgage*.

The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Mortgage in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants." The words "include" and "including" shall be interpreted as if followed by the words "without limitation." The headings of this Mortgage are for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Related Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles or Sections are to the respective Articles or Sections contained in this Mortgage unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial Code of the State, as in effect from time to time, which is not defined in this Mortgage shall have the meaning ascribed to that term in the Uniform Commercial Code of the State. If a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term shall have the meaning specified in Article 9. As used in this Mortgage, the terms "accounts," "chattel paper," "documents," "equipment," "general intangibles," "goods," "instruments" and "inventory" have the meanings provided by the Uniform Commercial Code on the date of this Mortgage.

This Mortgage constitutes a "construction mortgage" as defined in Section 55-9-334 of the Uniform Commercial Code of the State to the extent that it secures an obligation incurred for the construction of the Improvements, including the acquisition cost of the Land.

Section 9.11 *Issuer's Obligations Limited*.

Any other term or provision in this Mortgage or in any other documents executed in connection with the issuance of the Bonds or elsewhere to the contrary notwithstanding:

(a) Any and all obligations (including without limitation, fees, claims, demands, payments, damages, liabilities, penalties, assessments and the like of or imposed upon the Issuer or its members, officers, agents, employees, representatives, advisors or assigns, whether under this Mortgage or any of the documents executed in connection with the issuance of the Bonds or elsewhere and whether arising out of or based upon a claim or claims of tort, contract, misrepresentation, or any other or additional legal theory or theories whatsoever (collectively the "*Issuer Obligations*"), shall in all events be absolutely limited obligations and liabilities, payable solely out of the following, if any, available at the time one of the Issuer Obligations in question is asserted:

(1) Bond proceeds and investment earnings therefrom; and

(2) Payments derived from the Bonds, the Letter of Credit, the Indenture (including the Trust Estate to the extent provided in the Indenture) and the Issuer Lease Agreement (except for the fees and expenses of the Issuer and the Issuer's right to indemnification under the Issuer Lease Agreement under certain circumstances and as otherwise expressly set forth therein);

(the above provisions (1) and (2) being collectively referred to as the "exclusive sources of the Issuer Obligations").

(b) The Issuer Obligations shall not be deemed to constitute a debt or liability of the State or of any political subdivision thereof within the meaning of any state constitutional provision or statutory limitation and shall not

constitute a pledge of the full faith and credit of the State or of any political subdivision thereof, but shall be payable solely from and out of the exclusive sources of the Issuer Obligations and shall otherwise impose no liability whatsoever, primary or otherwise, upon the State or any political subdivision thereof or any charge upon their general credit or taxing power.

In no event shall any member, officer, agent, employee, representative or advisor of the Issuer, or any successor or assign of any such person or entity, be liable, personally or otherwise, for any Issuer Obligation.

(c) In no event shall this Mortgage be construed as:

(1) depriving the Issuer of any right or privilege; or

(2) requiring the Issuer or any member, officer, agent, employee, representative or advisor of the Issuer to take or omit to take, or to permit or suffer the taking of, any action by itself or by anyone else; which deprivation or requirement would violate or result in the Issuer being in violation of the Industrial Revenue Bond Act or any other applicable state or federal law.

Section 9.12 *Immunity of Officers, Employees and Directors of the Issuer and the Company*.

No recourse shall be had for the payment of Secured Obligations or other amounts payable under this Mortgage or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Mortgage contained against any past, present or future officer, member, trustee, director, limited partner, employee or agent of the Issuer or the Company, or, respectively, or of any successor public or private corporation thereto, either directly or through the Issuer, the Company or, respectively, any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, trustees, directors, limited partners, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Mortgage; it being expressly agreed and understood that the Bonds, the Indenture and this Mortgage are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any director, limited partner, trustee, member, officer, employee or agent, as such, past, present or future, of the Issuer or the Company or of any successor entity, either directly or through the Issuer or the Company or any successor entity, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Company whether contained in this Mortgage or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, limited partner, trustee, member, officer, employee or agent is, by the execution of this Mortgage and the Indenture, and as a condition of, and as part of the consideration for, the execution of this Mortgage and the Indenture, expressly waived and released.

Section 9.13 *Governing Law; Usury*.

This Mortgage shall be construed, governed and enforced in accordance with the Laws in effect from time to time in the State. It is the intent of the Company and the Collateral Agent and all other parties to the Related Documents to conform to and contract in strict compliance with applicable usury Law from time to time in effect. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, or otherwise, exceed the maximum nonusurious amount permitted by applicable Law (the "*Maximum Amount*"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. The Collateral Agent shall ever receive anything of value which is characterized as interest under applicable Law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction

of the principal amount owing on the Secured Obligations in the inverse order of its maturity and not to the payment of interest, or refunded to the Company or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate the Secured Obligations does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to shall, to the extent permitted by applicable Law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "*applicable Law*" shall mean the Laws of the State where the Property is located or where the Secured Obligations are is payable, or the federal Laws of the United States applicable to this transaction, whichever Laws allow the greatest interest, as such Laws now exist or may be changed or amended or come into effect in the future.

Section 9.14 *Entire Agreement*.

Under 58-6-5 NMSA 1978 (1990 Repl. Pamphlet) a contract, promise or commitment to loan money or to grant, extend or renew credit or any modification thereof, in an amount greater than Twenty-Five Thousand and No/100 Dollars ($25,000.00) not primarily for personal, family or household purposes made by a financial institution is not enforceable unless in writing and signed by the parties to be charged or that party's authorized representatives. The Credit Agreement and the Related Documents constitute the entire understanding and agreement with the Company concerning issuance, amendment, extension and renewal of the Letter of Credit, and supersedes all prior written or oral understandings and agreements between the Company and the Collateral Agent with respect to the matters addressed in any other Related Documents. Except as incorporated in writing into the Related Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Related Documents.

IN WITNESS WHEREOF, each of the Company and the Issuer has caused this Mortgage to be executed as of the day and year first written above.

COMPANY:

TEMPUR PRODUCTION USA, INC.
a Virginia corporation

By: /s/ WILLIAM H. POCHE
Name: **William H. Poche**
Title: **Assistant Treasurer**

State of Kentucky §
§
County of Fayette §

This instrument was acknowledged before me on October 25th, 2005, by William H. Poche, as Assistant Treasurer of Tempur Production USA, Inc., a Virginia corporation, for and on behalf of the corporation.

/s/ CJ LOUALLEN
Printed Name: **CJ Louallen**
Notary Public, State of Kentucky

[Executions Continue on the Next Page]

ISSUER:

BERNALILLO COUNTY, NEW MEXICO

By: /s/ ALAN B. ARMIJO

Name: **Alan B. Armijo**

Title: **Chair**

State of New Mexico §
§
County of Bernalillo §

This instrument was acknowledged before me on October 21, 2005, by Alan B. Armijo, as chairman of the Board of Commissioners of Bernalillo County, New Mexico, for and on behalf of the County.

/s/ MARLO TORRES

Printed Name: **Marlo Torres**

Notary Public, State of New Mexico
expires January 30, 2007

Exhibit 21.1

SUBSIDIARIES OF TEMPUR-PEDIC INTERNATIONAL INC.

Entity	State or Country of Organization
Tempur World, LLC	Delaware
Tempur World Holdings, LLC	Delaware
Tempur-Pedic, Inc.	Kentucky
Tempur Production USA, Inc.	Virginia
Tempur-Pedic Medical, Inc.	Kentucky
Tempur-Pedic, Direct Response, Inc.	Kentucky
Dawn Sleep Technologies, Inc.	Delaware
Tempur-Pedic Retail, Inc.	Delaware
Tempur World Holdings S.L.	Spain
Dan-Foam ApS	Denmark
Tempur UK, Ltd.	United Kingdom
Tempur Japan Yugen Kaisha	Japan
Tempur International Limited	United Kingdom
Tempur Danmark A/S	Denmark
Tempur Suomi OY	Finland
Tempur Norge AS	Norway
Tempur Sverige AB	Sweden
Tempur Italia Srl	Italy
Tempur France SARL	France
Tempur Holding GmbH	Germany
Tempur Sleep Center	Germany
Tempur Deutschland GmbH	Germany
Tempur Schweiz AG	Switzerland
Tempur Pedic Espana SA	Spain
Tempur Singapore Pte Ltd.	Singapore
Tempur Benelux B.V.	Netherlands

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-111545) pertaining to the 2003 Equity Incentive Plan, the 2003 Employee Stock Purchase Plan and the 2002 Stock Option Plan of our reports dated February 24, 2006, with respect to the consolidated financial statements and schedule of Tempur-Pedic International Inc., Tempur-Pedic International Inc. management's assessment of internal control over financial reporting, and the effectiveness of internal control over the financial reporting of Tempur-Pedic International Inc., included in this Annual Report (Form 10-K) for the year ended December 31, 2005.

/s/ Ernst & Young LLP

Louisville, Kentucky
March 10, 2006

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO SECURITIES EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a), AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Robert B. Trussell, Jr., certify that:

1. I have reviewed this annual report on Form 10-K of Tempur-Pedic International Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 13, 2006

/s/ ROBERT B. TRUSSELL, JR.

Robert B. Trussell, Jr.
Chief Executive Officer

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO SECURITIES EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a), AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Dale E. Williams, certify that:

1. I have reviewed this annual report on Form 10-K of Tempur-Pedic International Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 13, 2006

/s/ DALE E. WILLIAMS

Dale E. Williams
Senior Vice President, Chief Financial Officer and Secretary

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Each of the undersigned hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, in his capacity as an officer of Tempur-Pedic International Inc. (the "Company"), that, to his knowledge, the Annual Report of the Company on Form 10-K for the period ended December 31, 2004, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m or 78o(d)) and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of the Company. This written statement is being furnished to the Securities and Exchange Commission as an exhibit to such Form 10-K. A signed original of this statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Date: March 13, 2006

/s/ ROBERT B. TRUSSELL, JR.

Robert B. Trussell, Jr.
Chief Executive Officer

Date: March 13, 2006

/s/ DALE E. WILLIAMS

Dale E. Williams
Senior Vice President, Chief Financial Officer, and Secretary