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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington D.C. 20549

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**FORM 10-Q**

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(Mark One)

**Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.**

For the quarterly period ended June 30, 2004.

or

**Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.**

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

Commission file number: 0-24020

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**SYPRIS SOLUTIONS, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**61-1321992**  
(I.R.S. Employer  
Identification No.)

**101 Bullitt Lane, Suite 450**  
**Louisville, Kentucky 40222**  
(Address of principal executive offices, including zip code)

**(502) 329-2000**  
(Registrant's telephone number, including area code)

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

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

As of July 30, 2004, the Registrant had 17,868,435 shares of common stock outstanding.

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## PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

**SYPRIS SOLUTIONS, INC.**  
**CONSOLIDATED INCOME STATEMENTS**  
**(in thousands, except for per share data)**

	Three Months Ended		Six Months Ended	
	June 30, 2004	June 29, 2003	June 30, 2004	June 29, 2003
	(Unaudited)		(Unaudited)	
Net revenue:				
Outsourced services	\$ 85,923	\$ 58,852	\$ 166,050	\$ 109,067
Products	9,973	11,769	19,222	20,469
Total net revenue	95,896	70,621	185,272	129,536
Cost of sales:				
Outsourced services	77,003	50,585	146,310	93,962
Products	5,897	6,995	11,489	12,582
Total cost of sales	82,900	57,580	157,799	106,544
Gross profit	12,996	13,041	27,473	22,992
Selling, general and administrative	8,628	7,036	16,786	13,185
Research and development	875	1,066	1,399	2,088
Amortization of intangible assets	140	21	266	42
Operating income	3,353	4,918	9,022	7,677
Interest expense, net	227	547	515	1,033
Other (income) expense, net	(48)	85	(106)	152
Income before income taxes	3,174	4,286	8,613	6,492
Income tax expense	1,190	1,607	3,230	2,434
Net income	\$ 1,984	\$ 2,679	\$ 5,383	\$ 4,058
Earnings per common share:				
Basic	\$ 0.11	\$ 0.19	\$ 0.33	\$ 0.29
Diluted	\$ 0.11	\$ 0.19	\$ 0.32	\$ 0.28
Dividends declared per common share	\$ 0.03	\$ 0.03	\$ 0.06	\$ 0.06
Weighted average shares outstanding:				
Basic	17,827	14,213	16,326	14,205
Diluted	18,552	14,430	17,072	14,425

The accompanying notes are an integral part of the consolidated financial statements.

**SYPRIS SOLUTIONS, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
**(in thousands, except for share data)**

	June 30, 2004	December 31, 2003
	(Unaudited)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 12,539	\$ 12,019
Accounts receivable, net	71,915	45,484
Inventory, net	78,487	61,932
Other current assets	7,899	11,370
<b>Total current assets</b>	<b>170,840</b>	<b>130,805</b>
Property, plant and equipment, net	139,131	106,683
Goodwill	14,277	14,277
Other assets	13,320	11,730
	<b>\$ 337,568</b>	<b>\$ 263,495</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 46,780	\$ 29,598
Accrued liabilities	22,790	17,491
Current portion of long-term debt	5,000	3,200
<b>Total current liabilities</b>	<b>74,570</b>	<b>50,289</b>
Long-term debt	41,000	53,000
Other liabilities	16,030	15,425
<b>Total liabilities</b>	<b>131,600</b>	<b>118,714</b>
Stockholders' equity:		
Preferred stock, par value \$0.01 per share, 975,150 shares authorized; no shares issued	—	—
Series A preferred stock, par value \$0.01 per share, 24,850 shares authorized; no shares issued	—	—
Common stock, non-voting, par value \$0.01 per share, 10,000,000 shares authorized; no shares issued	—	—
Common stock, par value \$0.01 per share, 30,000,000 shares authorized; 17,868,435 and 14,283,323 shares issued and outstanding in 2004 and 2003, respectively	179	143
Additional paid-in capital	140,353	83,541
Retained earnings	67,782	63,443
Accumulated other comprehensive income (loss)	(2,346)	(2,346)
<b>Total stockholders' equity</b>	<b>205,968</b>	<b>144,781</b>
	<b>\$ 337,568</b>	<b>\$ 263,495</b>

The accompanying notes are an integral part of the consolidated financial statements.

**SYPRIS SOLUTIONS, INC.**  
**CONSOLIDATED CASH FLOW STATEMENTS**  
**(in thousands)**

	Six Months Ended	
	June 30, 2004	June 29, 2003
	(Unaudited)	
Cash flows from operating activities:		
Net income	\$ 5,383	\$ 4,058
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	8,516	6,186
Other noncash charges	693	393
Changes in operating assets and liabilities, net of acquisitions:		
Accounts receivable	(26,816)	(4,589)
Inventory	(11,431)	1,911
Other current assets	1,786	1,291
Accounts payable	20,113	(1,764)
Accrued liabilities	5,062	1,259
Net cash provided by operating activities	3,306	8,745
Cash flows from investing activities:		
Capital expenditures	(19,214)	(10,687)
Purchase of the net assets of acquired entities	(29,399)	(800)
Proceeds from sale of assets	—	2
Changes in nonoperating assets and liabilities	247	295
Net cash used in investing activities	(48,366)	(11,190)
Cash flows from financing activities:		
Net (decrease) increase in debt under revolving credit facility	(37,700)	3,000
Proceeds from long-term debt	27,500	—
Cash dividends paid	(950)	(850)
Proceeds from issuance of common stock	56,730	211
Net cash provided by financing activities	45,580	2,361
Net increase (decrease) in cash and cash equivalents	520	(84)
Cash and cash equivalents at beginning of period	12,019	12,403
Cash and cash equivalents at end of period	\$ 12,539	\$ 12,319

The accompanying notes are an integral part of the consolidated financial statements.

**SYPRIS SOLUTIONS, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****(1) Nature of Business**

Sypris is a diversified provider of outsourced services and specialty products. The Company performs a wide range of manufacturing, engineering, design, testing, and other technical services, typically under multi-year, sole-source contracts with corporations and government agencies in the markets for aerospace and defense electronics, truck components and assemblies, and for users of test and measurement equipment.

**(2) Basis of Presentation**

The accompanying unaudited consolidated financial statements include the accounts of Sypris Solutions, Inc. and its wholly-owned subsidiaries (collectively, "Sypris" or the "Company"), Sypris Electronics, LLC, Sypris Test & Measurement, Inc., Sypris Data Systems, Inc., and Sypris Technologies, Inc., and have been prepared by the Company in accordance with the rules and regulations of the Securities and Exchange Commission. All significant intercompany transactions and accounts have been eliminated. These unaudited consolidated financial statements reflect, in the opinion of management, all material adjustments (which include only normal recurring adjustments) necessary to fairly state the results of operations, financial position and cash flows for the periods presented, and the disclosures herein are adequate to make the information presented not misleading. Preparing financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. Actual results for the three and six months ended June 30, 2004 are not necessarily indicative of the results that may be expected for the year ending December 31, 2004. These unaudited consolidated financial statements should be read in conjunction with the consolidated financial statements, and notes thereto, for the year ended December 31, 2003 as presented in the Company's annual report on Form 10-K.

**(3) Acquisitions**

On May 3, 2004, the Company acquired certain assets and liabilities of a plant located in Kenton, Ohio from ArvinMeritor Inc. that will expand the Company's manufacturing capabilities in trailer axle beams and various drive train components. The transaction was accounted for as a purchase, in which the purchase price of \$14,062,000 was initially allocated based on the fair values of the assets and liabilities acquired. The results of operations of the acquired business were included in the consolidated financial statements beginning May 4, 2004. Following are the estimated fair values of the assets acquired and liabilities assumed at the date of the acquisition, which are subject to refinement (in thousands):

Current assets	\$ 3,281
Property, plant and equipment	10,774
Other assets	800
Total assets acquired	14,855
Current liabilities assumed	(793)
Net assets acquired	\$ 14,062

Other assets represent the estimated fair value of supply agreements with ArvinMeritor that the Company will amortize on a straight-line basis over nine years.

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On June 30, 2004, the Company acquired certain assets and liabilities of a plant located in Toluca, Mexico from Dana Corporation that will expand the Company's manufacturing capabilities in steer axles, drive axle shafts and various drive train components. The transaction was accounted for as a purchase, in which the purchase price of \$15,348,000 was initially allocated based on the fair values of the assets and liabilities acquired. The results of operations of the acquired business will be included in the consolidated financial statements beginning July 1, 2004. Following are the estimated fair values of the assets acquired and liabilities assumed at the date of the acquisition, which are subject to refinement (in thousands):

Current assets	\$ 2,185
Property, plant and equipment	13,631
Other assets	402
<b>Total assets acquired</b>	<b>16,218</b>
Current liabilities assumed	(870)
<b>Net assets acquired</b>	<b>\$ 15,348</b>

Other assets represent the estimated fair value of supply agreements with Dana that the Company will amortize on a straight-line basis over eight years.

### (4) Stock-Based Compensation

Stock options are granted under various stock compensation programs to employees and non-employee directors. The Company accounts for stock option grants in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees." For purposes of pro forma disclosures, the estimated fair value of the options is amortized to expense over the options' vesting period. The Company's pro forma information is as follows (in thousands, except for per share data):

	Three Months Ended		Six Months Ended	
	June 30, 2004	June 29, 2003	June 30, 2004	June 29, 2003
	(Unaudited)		(Unaudited)	
Net income	\$ 1,984	\$ 2,679	\$ 5,383	\$ 4,058
Pro forma stock-based compensation expense, net of tax	(451)	(529)	(823)	(909)
<b>Pro forma net income</b>	<b>\$ 1,533</b>	<b>\$ 2,150</b>	<b>\$ 4,560</b>	<b>\$ 3,149</b>
<b>Earnings per common share:</b>				
Basic – as reported	\$ 0.11	\$ 0.19	\$ 0.33	\$ 0.29
Basic – pro forma	\$ 0.09	\$ 0.15	\$ 0.28	\$ 0.22
Diluted – as reported	\$ 0.11	\$ 0.19	\$ 0.32	\$ 0.28
Diluted – pro forma	\$ 0.08	\$ 0.15	\$ 0.27	\$ 0.22

### (5) Earnings Per Common Share

There were no adjustments required to be made to net income for purposes of computing basic and diluted earnings per common share. A reconciliation of the weighted average shares outstanding used in the calculation of basic and diluted earnings per common share is as follows (in thousands):

	Three Months Ended		Six Months Ended	
	June 30, 2004	June 29, 2003	June 30, 2004	June 29, 2003
	(Unaudited)		(Unaudited)	
Shares used to compute basic earnings per common share	17,827	14,213	16,326	14,205
Dilutive effect of stock options	725	217	746	220
<b>Shares used to compute diluted earnings per common share</b>	<b>18,552</b>	<b>14,430</b>	<b>17,072</b>	<b>14,425</b>

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**(6) Inventory**

Inventory consisted of the following (in thousands):

	June 30, 2004	December 31, 2003
	(Unaudited)	
Raw materials	\$ 27,776	\$ 22,394
Work in process	19,474	15,854
Finished goods	5,056	3,052
Costs relating to long-term contracts and programs, net of amounts attributed to revenue recognized to date	43,340	36,569
Progress payments related to long-term contracts and programs	(10,466)	(9,851)
LIFO reserve	(821)	(940)
Reserve for excess and obsolete inventory	(5,872)	(5,146)
	<u>\$ 78,487</u>	<u>\$ 61,932</u>

**(7) Segment Data**

The Company's operations are conducted in two reportable business segments: the Electronics Group and the Industrial Group. There was no material intersegment net revenue recognized in any of the periods presented. The following table presents financial information for the reportable segments of the Company (in thousands):

	Three Months Ended		Six Months Ended	
	June 30, 2004	June 29, 2003	June 30, 2004	June 29, 2003
	(Unaudited)		(Unaudited)	
<b>Net revenue from unaffiliated customers:</b>				
Electronics Group	\$ 37,674	\$ 45,544	\$ 78,599	\$ 81,233
Industrial Group	58,222	25,077	106,673	48,303
	<u>\$ 95,896</u>	<u>\$ 70,621</u>	<u>\$ 185,272</u>	<u>\$ 129,536</u>
<b>Gross profit:</b>				
Electronics Group	\$ 7,460	\$ 9,723	\$ 15,361	\$ 17,022
Industrial Group	5,536	3,318	12,112	5,970
	<u>\$ 12,996</u>	<u>\$ 13,041</u>	<u>\$ 27,473</u>	<u>\$ 22,992</u>
<b>Operating income:</b>				
Electronics Group	\$ 973	\$ 3,628	\$ 2,948	\$ 5,301
Industrial Group	3,516	2,593	8,704	4,485
General, corporate and other	(1,136)	(1,303)	(2,630)	(2,109)
	<u>\$ 3,353</u>	<u>\$ 4,918</u>	<u>\$ 9,022</u>	<u>\$ 7,677</u>
<b>Total assets:</b>			June 30, 2004	December 31, 2003
Electronics Group			(Unaudited)	
Industrial Group			\$ 121,054	\$ 121,560
General, corporate and other			201,370	121,429
			15,144	20,506
			<u>\$ 337,568</u>	<u>\$ 263,495</u>

**(8) Commitments and Contingencies**

The Company is involved in certain litigation and contract issues arising in the normal course of business. While the outcome of these matters cannot, at this time, be predicted in light of the uncertainties inherent therein, management does not expect that these matters will have a material adverse effect on the consolidated financial position or results of operations of the Company.

As of June 30, 2004, the Company had outstanding purchase commitments of approximately \$8,485,000, primarily for the acquisition of manufacturing equipment.

**(9) Issuance of Common Stock**

On March 17, 2004, the Company completed a public stock offering of 3,000,000 shares of its common stock at \$17.00 per share and generated proceeds, after underwriting discounts and estimated expenses, of approximately \$48,017,000. On April 8, 2004, an over-allotment option was exercised for 450,000 shares at \$17.00 per share and generated proceeds, after underwriting discounts and estimated expenses, of approximately \$7,203,000. The proceeds of the offering were used principally to repay debt.

**(10) Issuance of Senior Notes**

On June 10, 2004, the Company issued \$27.5 million of senior notes through a private placement transaction. The Company is authorized to issue up to \$55.0 million of senior notes and expects to issue the remaining \$27.5 million during the third quarter of 2004, subject to certain pre-closing conditions. The notes issued on June 10, 2004 consist of \$7.5 million of notes due in 2009 bearing interest at 4.73% and a \$20.0 million note due in 2014 bearing interest at 5.78%. The senior notes contain customary affirmative and negative covenants, including financial covenants requiring the maintenance of a specified leverage ratio and minimum levels of net worth. As of June 30, 2004, the Company was in compliance with all covenants.

**(11) Employee Benefit Plans**

Pension expense consisted of the following (in thousands):

	Three Months Ended		Six Months Ended	
	June 30, 2004	June 29, 2003	June 30, 2004	June 29, 2003
	(Unaudited)		(Unaudited)	
Service cost	\$ 19	\$ 42	\$ 85	\$ 53
Interest cost on projected benefit obligation	485	485	1,043	1,051
Net amortizations, deferrals and other costs	55	185	369	241
Expected return on plan assets	(746)	(689)	(1,353)	(1,297)
	<u>\$ (187)</u>	<u>\$ 23</u>	<u>\$ 144</u>	<u>\$ 48</u>

Pension expense for the six months ended June 30, 2004 has been adjusted to give effect to a revision to the estimate of total pension expense expected for the year ending December 31, 2004. Total estimated contributions expected to be paid to the Company's pension plans during 2004 is approximately \$600,000.

**(12) Income Taxes**

The Company's effective tax rate for the three months and six months ended June 30, 2004 was 37.5%. Reconciling items between the federal statutory income tax rate of 34.0% and the effective tax rate include state income taxes, partially offset by management's estimate for 2004 research and development tax credits and certain other permanent differences.

**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**
**Results of Operations**

The tables presented below, which compare our results of operations for the second quarter and six month periods from 2004 to 2003, present the results for each period, the change in those results from 2004 to 2003 in both dollars and percentage change and the results for each period as a percentage of net revenue. The columns present the following:

- The first two data columns in each table show the absolute results for each period presented.
- The columns entitled "Year Over Year Change" and "Year Over Year Percentage Change" show the change in results, both in dollars and percentages. These two columns show favorable changes as positive and unfavorable changes as negative. For example, when our net revenue increases from one period to the next, that change is shown as a positive number in both columns. Conversely, when expenses increase from one period to the next, that change is shown as a negative number in both columns.
- The last two columns in each table show the results for each period as a percentage of net revenue. In these two columns, the cost of sales and gross profit for each are given as a percentage of that segment's net revenue. These amounts are shown in italics.

In addition, as used in these tables, "NM" means "not meaningful."

**Three Months Ended June 30, 2004 Compared to Three Months Ended June 29, 2003**

	Three Months Ended		Year Over Year Change	Year Over Year Percentage Change	Results as Percentage of Net Revenue for the Three Months Ended	
	June 30, 2004	June 29, 2003	Favorable (Unfavorable)	Favorable (Unfavorable)	June 30, 2004	June 29, 2003
(in thousands, except percentage data)						
<b>Net revenue:</b>						
Electronics Group	\$ 37,674	\$ 45,544	\$ (7,870)	(17.3)%	39.3%	64.5%
Industrial Group	58,222	25,077	33,145	132.2	60.7	35.5
<b>Total</b>	<b>95,896</b>	<b>70,621</b>	<b>25,275</b>	<b>35.8</b>	<b>100.0</b>	<b>100.0</b>
<b>Cost of sales:</b>						
Electronics Group	30,214	35,821	5,607	15.7	80.2	78.7
Industrial Group	52,686	21,759	(30,927)	(142.1)	90.5	86.8
<b>Total</b>	<b>82,900</b>	<b>57,580</b>	<b>(25,320)</b>	<b>(44.0)</b>	<b>86.4</b>	<b>81.5</b>
<b>Gross profit:</b>						
Electronics Group	7,460	9,723	(2,263)	(23.3)	19.8	21.3
Industrial Group	5,536	3,318	2,218	66.8	9.5	13.2
<b>Total</b>	<b>12,996</b>	<b>13,041</b>	<b>(45)</b>	<b>(0.3)</b>	<b>13.6</b>	<b>18.5</b>
Selling, general and administrative	8,628	7,036	(1,592)	(22.6)	9.0	10.0
Research and development	875	1,066	191	17.9	0.9	1.5
Amortization of intangible assets	140	21	(119)	(566.7)	0.2	—
<b>Operating income</b>	<b>3,353</b>	<b>4,918</b>	<b>(1,565)</b>	<b>(31.8)</b>	<b>3.5</b>	<b>7.0</b>
Interest expense, net	227	547	320	58.5	0.2	0.8
Other (income) expense, net	(48)	85	133	NM	—	0.1
<b>Income before income taxes</b>	<b>3,174</b>	<b>4,286</b>	<b>(1,112)</b>	<b>(25.9)</b>	<b>3.3</b>	<b>6.1</b>
Income taxes	1,190	1,607	417	25.9	1.2	2.3
<b>Net income</b>	<b>\$ 1,984</b>	<b>\$ 2,679</b>	<b>\$ (695)</b>	<b>(25.9)%</b>	<b>2.1%</b>	<b>3.8%</b>

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**Six Months Ended June 30, 2004 Compared to Six Months Ended June 29, 2003**

	Six Months Ended		Year Over Year Change	Year Over Year Percentage Change	Results as Percentage of Net Revenue for the Six Months Ended	
	June 30, 2004	June 29, 2003	Favorable (Unfavorable)	Favorable (Unfavorable)	June 30, 2004	June 29, 2003
(in thousands, except percentage data)						
<b>Net revenue:</b>						
Electronics Group	\$ 78,599	\$ 81,233	\$ (2,634)	(3.2)%	42.4%	62.7%
Industrial Group	106,673	48,303	58,370	120.8	57.6	37.3
<b>Total</b>	<b>185,272</b>	<b>129,536</b>	<b>55,736</b>	<b>43.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Cost of sales:</b>						
Electronics Group	63,238	64,211	973	1.5	80.5	79.0
Industrial Group	94,561	42,333	(52,228)	(123.4)	88.6	87.6
<b>Total</b>	<b>157,799</b>	<b>106,544</b>	<b>(51,255)</b>	<b>(48.1)</b>	<b>85.2</b>	<b>82.3</b>
<b>Gross profit:</b>						
Electronics Group	15,361	17,022	(1,661)	(9.8)	19.5	21.0
Industrial Group	12,112	5,970	6,142	102.9	11.4	12.4
<b>Total</b>	<b>27,473</b>	<b>22,992</b>	<b>4,481</b>	<b>19.5</b>	<b>14.8</b>	<b>17.7</b>
Selling, general and administrative	16,786	13,185	(3,601)	(27.3)	9.1	10.2
Research and development	1,399	2,088	689	33.0	0.7	1.6
Amortization of intangible assets	266	42	(224)	(533.3)	0.1	—
<b>Operating income</b>	<b>9,022</b>	<b>7,677</b>	<b>1,345</b>	<b>17.5</b>	<b>4.9</b>	<b>5.9</b>
Interest expense, net	515	1,033	518	50.1	0.3	0.8
Other (income) expense, net	(106)	152	258	NM	—	0.1
<b>Income before income taxes</b>	<b>8,613</b>	<b>6,492</b>	<b>2,121</b>	<b>32.7</b>	<b>4.6</b>	<b>5.0</b>
Income taxes	3,230	2,434	(796)	(32.7)	1.7	1.9
<b>Net income</b>	<b>\$ 5,383</b>	<b>\$ 4,058</b>	<b>\$ 1,325</b>	<b>32.7%</b>	<b>2.9%</b>	<b>3.1%</b>

*Backlog.* Our backlog increased \$76.0 million to \$251.1 million at June 30, 2004, from \$175.1 million at June 29, 2003, on \$237.5 million in net orders in the six months ended June 30, 2004 compared to \$150.3 million in net orders in the six months ended June 29, 2003. We expect to convert approximately 89% of the backlog at June 30, 2004 to revenue during the next twelve months.

Backlog for our Electronics Group increased \$2.5 million to \$131.0 million at June 30, 2004, from \$128.5 million at June 29, 2003, on \$83.9 million in net orders in the six months ended June 30, 2004 compared to \$94.2 million in net orders in the six months ended June 29, 2003. We expect to convert approximately 80% of the backlog at June 30, 2004 to revenue during the next twelve months.

Backlog for our Industrial Group increased \$73.5 million to \$120.1 million at June 30, 2004, from \$46.6 million at June 29, 2003, on \$153.6 million in net orders in the six months ended 2004 compared to \$56.1 million in net orders in the six months ended June 29, 2003. Backlog and net orders increased \$63.9 million and \$85.3 million, respectively, due to three new contracts that closed since December 31, 2003. We expect to convert substantially all of the Industrial Group's backlog at June 30, 2004 to revenue during the next twelve months.

*Net Revenue.* The Electronics Group derives its revenue from manufacturing services, other outsourced services and product sales. Manufacturing services revenue decreased \$7.8 million in the second quarter and \$5.7 million in the six month period primarily due to delayed shipments arising from a customer's design changes and contracts completed during 2003. The shipments were delayed during the second quarter and are currently expected to be shipped early in 2005. Net revenue from other outsourced services increased \$2.0 million in the second quarter and \$5.3 million in the six month period primarily due to an increase in calibration and engineering services. Product sales decreased \$2.0 million in the second quarter and \$2.3 million in the six month period primarily due to reduced government funding and increased competition.

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The Industrial Group entered into new multi-year contracts on December 31, 2003, May 3, 2004 and June 30, 2004 and, on each of the respective dates, acquired certain manufacturing assets from its customers in connection with the new contracts. These contracts include two with Dana Corporation for steer axles, drive axle shafts and various drive train components for the light, medium and heavy-duty truck markets and one with ArvinMeritor, Inc. for trailer axle beams and various drive train components. The December and May contracts generated outsourced services revenue of \$28.5 million and \$47.2 million in the second quarter and six month periods of 2004, respectively. The June contract will begin generating revenue in the third quarter of 2004. Excluding the new contracts, the Industrial Group's net revenue increased \$4.6 million and \$11.2 million in the second quarter and six month periods, respectively, primarily due to a general increase in demand for medium and heavy-duty trucks.

*Gross Profit.* The Electronics Group's gross profit decreased in the second quarter and six month periods primarily due to the decline in revenue for manufacturing services and products. The reduced volume also negatively impacted fixed cost absorption for manufacturing services thus contributing to the decrease in gross profit. Manufacturing services contributed \$1.2 million of the decrease in gross profit in the second quarter and six month periods while product sales contributed \$0.8 million in each period. Although revenue from other technical services increased in the second quarter and six month periods, the increase was primarily attributable to calibration and testing services, which provided lower gross profit as a percentage of revenue than certain engineering services provided in 2003. This revenue mix change resulted in a decrease in gross profit of \$0.3 million in the second quarter and an increase in gross profit of \$0.3 million in the six month period.

The Industrial Group's gross profit increased in the second quarter and six month periods primarily due to the revenue growth from new contracts. The gross profit contributed by the new contracts was partially offset by manufacturing inefficiencies associated with disruptions in raw material availability and the increase in demand in the commercial truck market. The market expansion and disruptions to production schedules during the second quarter arising from steel allocations from certain suppliers led to short production quantity runs, increased machinery set-up time, higher maintenance costs and increased overtime, all of which contributed additional costs to our operations. Certain deliveries were also expedited at additional costs in order to meet customer requirements and prevent interruptions in our customers' production schedules.

*Selling, General and Administrative.* Selling, general and administrative expense increased in the second quarter and six month periods primarily due to higher administrative costs related to additional infrastructure to support the new contracts in the Industrial Group and the overall growth of the business and an increase in selling-related expenses.

*Research and Development.* Research and development costs decreased in the second quarter and six month periods due to the completion of the first release of Silver Phoenix, a new data system product line within our Electronics Group. The majority of research and development costs during the first six months of 2004 were related to future releases of this product.

*Amortization of Intangible Assets.* Amortization of intangible assets increased in the second quarter and six month periods primarily due to certain identifiable intangible assets acquired in connection with the new Industrial Group contracts.

*Interest Expense, Net.* Interest expense decreased in the second quarter and six month periods due to a decrease in debt outstanding and a lower weighted average interest rate. The weighted average interest rate decreased effective with the July 2003 expiration of interest rate swap rate agreements with higher than market interest rates.

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*Income Taxes.* Our effective income tax rate remained at 37.5% in the second quarter and six month periods.

### **Liquidity, Capital Resources and Financial Condition**

Net cash provided by operating activities for the first six months of 2004 was \$3.3 million, a decrease of \$5.4 million from the comparable prior year period. The decrease was primarily due to an investment in working capital to support the new Industrial Group contracts and the increased revenue from the growth in the commercial truck market.

Net cash used in investing activities for the first six months of 2004 was \$48.4 million, an increase of \$37.2 million from the comparable prior year period. The increase includes the Industrial Group's acquisition of net assets approximating \$29.4 million related to the new contracts and capital expenditures for our Electronics Group and Industrial Group totaling \$7.5 million and \$11.5 million, respectively. Capital expenditures for our Electronics Group were principally comprised of manufacturing, assembly and test equipment. Capital expenditures for our Industrial Group included forging, machining, and centralized tooling equipment in support of our truck components & assemblies operations.

Net cash provided by financing activities for the first six months of 2004 was \$45.6 million, an increase of \$43.2 million from the comparable prior year period. We received net proceeds of \$55.2 million for our public stock offering of 3,450,000 shares of common stock that closed in March and April 2004. Proceeds from the offering were principally used to reduce debt on our revolving credit facility. We issued senior notes for \$27.5 million in June 2004 through a private placement transaction. The transaction is part of an authorization for the issuance of \$55.0 million of senior notes which we expect to complete during the third quarter.

We had total availability for borrowings and letters of credit under our revolving credit facility of \$106.5 million at June 30, 2004, which, when combined with our unrestricted cash balance of \$12.5 million, provides for total cash and borrowing capacity of \$119.0 million. Maximum borrowings on the revolving credit facility are \$125.0 million, subject to a \$15.0 million limit for letters of credit. The credit agreement includes an option to increase the amount of available credit to \$150.0 million from \$125.0 million, subject to the lead bank's approval. Borrowings under the revolving credit facility may be used to finance working capital requirements, acquisitions and for general corporate purposes, including capital expenditures. Most acquisitions require the approval of our bank group.

As a result of the repayment of debt on our revolving credit facility with proceeds from the public stock offering and the issuance of senior notes, our principal commitment for the revolving credit facility decreased from the amounts disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2003. As of June 30, 2004, our principal commitment under the revolving credit facility was \$5.0 million due in 2004 and \$13.5 million due in 2008. Additionally, as of June 30, 2004 we have senior notes for \$7.5 million and \$20.0 million due in 2009 and 2011, respectively. We also had purchase commitments totaling approximately \$8.5 million at June 30, 2004, primarily for manufacturing equipment.

On June 30, 2004, a newly-formed Mexican subsidiary of the Company acquired certain assets of a manufacturing facility located in Toluca, Mexico. The results of operations of the acquired business will be included in the consolidated financial statements beginning July 1, 2004. The translation of the financial statements of the Company's Mexican subsidiary from local currencies to the U.S. dollar subjects the Company to exposure relating to fluctuating exchange rates. However, this exposure is mitigated somewhat by a large percentage of transactions denominated in the U.S. dollar. Management does not consider its exposure to exchange rate risks to be material and considers the Mexican peso a relatively stable currency. The Company does not typically manage its related foreign currency exchange rate risk through the use of financial instruments.

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We believe that sufficient resources will be available to satisfy our cash requirements for at least the next twelve months. Cash requirements for periods beyond the next twelve months depend on our profitability, our ability to manage working capital requirements and our rate of growth. If we make significant acquisitions or if working capital and capital expenditure requirements exceed expected levels during the next twelve months or in subsequent periods, we may require additional external sources of capital. There can be no assurance that any additional required financing will be available through bank borrowings, debt or equity financings or otherwise, or that if such financing is available, it will be available on terms acceptable to us. If adequate funds are not available on acceptable terms, our business, results of operations and financial condition could be adversely affected.

### **Critical Accounting Policies**

See the information concerning our critical accounting policies included under Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operation - Critical Accounting Policies in our Annual Report on Form 10-K for the fiscal year ended December 31, 2003. There have been no significant changes in our critical accounting policies during the first six months of 2004.

### **Forward-looking Statements**

This Form 10-Q may contain projections and other "forward-looking statements" within the meaning of Section 21E of the Securities Exchange Act of 1934, as they relate to, or may affect, the Company's future results. These statements only reflect management's current opinions and no assurance can be given that any of these results will actually occur. Important factors could cause performance to differ materially from projected results contained in, or based upon, these statements, including: the discovery of, or failure to discover, material issues during due diligence; the failure to agree on the final terms of definitive agreements, long-term supply agreements, collective bargaining agreements, or related agreements or any party's breach of, or refusal to close the transactions reflected in, those agreements; the ability to successfully manage growth or contraction in the economy, or the commercial vehicle or electronics markets; access to capital on favorable terms as needed for operations or growth; availability of funds under our credit facility; the ability to achieve expected annual savings and synergies from past and future business combinations or otherwise to successfully integrate such combinations; competitive factors and price pressures; cost and availability of raw materials such as steel, third party component parts, tooling, spare parts, equipment or other supplies on a timely basis; inventory risks due to shifts in market demand and/or price erosion of purchased components; changes in product mix; program changes, delays, or cancellations by the government or other customers; concentrated reliance on major customers or suppliers; cost and yield issues associated with the Company's manufacturing facilities; revisions in estimated costs related to major contracts; labor relations; risks inherent in operating abroad, including foreign currency exchange rates; performance of our pension fund portfolios; changes in applicable law or in the Company's regulatory authorizations, security clearances, or other legal rights to conduct its business, deal with its work force, import or export goods and services; adverse regulatory actions, or other governmental sanctions; risks of litigation, including litigation with respect to environmental, asbestos-related, product liability or contractual matters, customer or supplier claims, or stockholders; the effects (including possible increases in the cost of doing business) resulting from future war and terrorists activities or political uncertainties; energy cost increases; cost and availability of insurance coverage; natural disasters, casualties, utility disruptions, or the failure to anticipate unknown risks and uncertainties present in the Company's businesses; dependence on current management; volatility of the Company's stock price; as well as other factors included in the Company's reports filed with the Securities and Exchange Commission.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to financial market risks, including changes in interest rates and foreign currency exchange rates. Borrowings under our credit agreement bear interest at a variable rate based on the prime rate, the London Interbank Offered Rate (“LIBOR”), or certain alternative short-term rates, plus a margin (1.0% at June 30, 2004) based upon our leverage ratio. An increase in interest rates of 100 basis points would result in additional interest expense approximating \$185,000 on an annualized basis, based upon our debt outstanding at June 30, 2004. Fluctuations in foreign currency exchange rates have historically had little impact on us because the vast majority of our transactions are denominated in U.S. dollars. Inflation has not been a significant factor in our operations in any of the periods presented, and it is not expected to materially affect operations in the next twelve months.

**ITEM 4. CONTROLS AND PROCEDURES**

As of the end of the period covered by this quarterly report, an evaluation was performed under the supervision and with the participation of the Company’s management, including the President and Chief Executive Officer (the “CEO”) and the Chief Financial Officer (the “CFO”), of the effectiveness of the design and operation of the Company’s disclosure controls and procedures. Based on that evaluation, the Company’s management, including the CEO and CFO, concluded that the Company’s disclosure controls and procedures were effective. There have been no significant changes in the Company’s internal controls over financial reporting that occurred during the quarter ended June 30, 2004, that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

**PART II. OTHER INFORMATION**

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

The Company’s Annual Meeting of Stockholders was held on April 27, 2004 in Louisville, Kentucky. At the meeting, stockholders elected three Class II directors for a term of three years pursuant to the following votes:

<u>Class I Director</u>	<u>Votes in Favor</u>	<u>Votes Withheld</u>
R. Scott Gill	11,970,940	1,880,249
Roger W. Johnson	12,271,605	1,579,584
Robert Sroka	13,193,898	657,291

The total number of shares of common stock outstanding as of March 11, 2003, the record date of the Annual Meeting of Stockholders, was 14,329,753.

The 2004 Sypris Equity Plan, which authorizes awards of stock, stock options and stock appreciation rights to Directors and Officers and certain other employees, respecting, in the aggregate, 3,000,000 shares of Common Stock or other authorized common stock of the Company no more dilutive than the Common Stock, was approved by a vote of the majority of the shares of the Company’s common stock represented at the meeting: 9,669,655 shares were voted in favor of the proposal; 3,423,754 were voted against; and 7,687 abstained.

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### ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

#### (a) Exhibits:

<u>Exhibit Number</u>	<u>Description</u>
3.1	Certificate of Incorporation of Sypris Solutions, Inc.
10.1	2004 Sypris Equity Plan effective as of April 27, 2004 (incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q for the quarterly period ended March 30, 2004 filed on April 30, 2004 (Commission File No. 000-24020)).
10.2	Note Purchase Agreement between The Guardian Life Insurance Company of America, Connecticut General Life Insurance Company, Life Insurance Company of North America, Jefferson Pilot Financial Insurance Company, Jefferson-Pilot Life Insurance Company, Jefferson Pilot LifeAmerica Insurance Company, and Sypris Solutions, Inc. dated as of June 10, 2004.
31.1	CEO certification pursuant to Section 302 of Sarbanes - Oxley Act of 2002.
31.2	CFO certification pursuant to Section 302 of Sarbanes - Oxley Act of 2002.
32	CEO and CFO certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes - Oxley Act of 2002.

#### (b) Reports on Form 8-K filed or furnished with the Securities and Exchange Commission:

On April 22, 2004, we furnished a Current Report on Form 8-K, attaching a press release dated April 22, reporting 2004 first quarter results of operations and financial condition.

On May 4, 2004, we furnished a Current Report on Form 8-K, attaching a press release dated May 3, reporting that we had completed the purchase of a manufacturing plant located in Kenton, Ohio from ArvinMeritor, Inc.

On June 10, 2004, we furnished a Current Report on Form 8-K, attaching a press release dated June 10, reporting that we had completed the first funding of a total issuance of up to \$55 million of unsecured senior notes through a private placement.

On June 30, 2004, we furnished a Current Report on Form 8-K, attaching a press release dated June 30, reporting that we had completed the purchase of a manufacturing facility located in Toluca, Mexico from Dana Corporation.

On June 30, 2004, we furnished a Current Report on Form 8-K, attaching a press release dated June 30, reporting a lower earnings forecast for the second quarter and full year 2004.

**SIGNATURES**

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

SYPRIS SOLUTIONS, INC.  
(Registrant)

Date: August 3, 2004

By: /s/ David D. Johnson

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(David D. Johnson)  
Vice President & Chief Financial Officer

Date: August 3, 2004

By: /s/ Anthony C. Allen

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(Anthony C. Allen)  
Vice President & Chief Accounting Officer

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 04:00 PM 09/22/1997  
971317552-2799254

CERTIFICATE OF INCORPORATION  
OF  
SYPRIS SOLUTIONS, INC.

The undersigned Incorporator, for the purpose of forming a corporation under the General Corporation Law of the State of Delaware, does hereby certify as follows:

FIRST: Name. The name of the Corporation is Sypris Solutions, Inc.

SECOND: Registered Office and Registered Agent. The registered office of the Corporation in the State of Delaware is 1209 Orange Street, New Castle County, Wilmington, Delaware 19801. The Registered Agent at the same address is The Corporation Trust Company.

THIRD: Purposes. The purposes of the Corporation are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: Incorporator. The name and mailing address of the incorporator is Dana M. Dembkowski, 1209 Orange Street, Wilmington, Delaware 19801.

FIFTH: Capital Stock.

I. Authorized Capital Stock. The total number of shares which are authorized to be issued by the Corporation is 20,000,000 shares of common stock having a \$.01 par value per share ("Common Stock"), 10,000,000 shares of nonvoting common stock having a \$.01 par value per share ("Nonvoting Common Stock"), and 1,000,000 shares of preferred stock having a \$.01 par value per share ("Preferred Stock").

A description of the foregoing classes of stock of the Corporation and a statement of the voting powers, preferences and relative rights and the qualifications, limitations or restrictions granted to or imposed upon the shares of each class is as follows:

II. Preferred Stock

A. Authority is hereby vested in the Board of Directors, by resolution, to divide any or all of the authorized shares of Preferred Stock into series and, within the limitations imposed by law and this Certificate of Incorporation, to fix and determine as to each such series:

- [1] The voting rights and powers, if any, of the holders of shares of such series;
- [2] The number of shares and designation of such series;
- [3] The annual dividend rate;
- [4] The prices at, and the terms and conditions on which, shares of such series may be redeemed;

[5] The amounts payable on shares of such series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;

[6] The terms, if any, upon which shares of such series may be convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes, including the price or prices and the rate of conversion or exchange, any adjustments thereof, and all other terms and conditions;

[7] The sinking fund provisions, if any, for the redemption or purchase of shares of such series; and

[8] Such other provisions as may be fixed by the Board of Directors of the Corporation pursuant to the Delaware General Corporation Law.

B. All shares of any one series of Preferred Stock shall be identical with each other in all respects, except that shares of any one series issued at different times may differ as to the dates from which dividends thereon shall be cumulative.

C. The Corporation may at any time permitted by the resolution adopted by the Board of Directors providing for the issue of any series of Preferred Stock and at the redemption price or prices and on the terms and conditions stated in said resolution, redeem the whole or any part of the shares of any series of Preferred Stock at the time outstanding.

D. Except when otherwise herein or by statute specifically provided, or except as provided by the resolution adopted by the Board of Directors providing for the issue of any series, the holders of shares of Preferred Stock shall not be entitled to vote at the election of directors or on any question arising at any meeting of stockholders of the Corporation.

E. To the extent permitted by the Delaware General Corporation Law, the shares of Preferred Stock shall be convertible into other shares of the capital stock of this Corporation upon such terms and conditions and at such rates of conversion or exchange as may be provided by the resolution adopted by the Board of Directors providing for the issue of any series.

III. Common Stock and Nonvoting Common Stock. The Common Stock and Nonvoting Common Stock are identical, in all respects, except as follows:

A. Each share of Common Stock entitles the holder thereof to one vote on each matter submitted to a stockholders' vote, while no shares of Nonvoting Common Stock shall have any voting rights, except for those voting rights required by the Delaware General Corporation Law.

B. Subject to the limitations prescribed herein, holders of the Common Stock and Nonvoting Common Stock shall participate equally in any dividends (payable in cash, stock or property) and stock splits, when and as declared by the Board of Directors, out of assets of the Corporation legally available therefor; provided, however, that, in the event of a stock split, or a pro rata stock dividend of like shares declared on outstanding shares, the holders of Common Stock shall receive shares of Common Stock and the holders of Nonvoting Common Stock shall receive shares of Nonvoting Common Stock.

C. In the event the Corporation is liquidated, dissolved or wound up, whether voluntarily or involuntarily, the holders of the Common Stock and Nonvoting Common Stock shall participate equally in any distribution. A merger or consolidation of the Corporation with or into any other corporation or a sale or conveyance of all or any part of the assets of the Corporation (which shall not in fact result in the liquidation of the Corporation and the distribution of assets to stockholders) shall not be deemed to be a voluntary or involuntary liquidation or dissolution or winding up of the Corporation within the meaning of this paragraph.

D. If at any time while there are shares of Common Stock and Nonvoting Common Stock issued and outstanding, it shall be determined by the Board of Directors, in its sole discretion, that legislation or

regulations are enacted or any judicial or administrative determination is made which would prohibit the quotation, listing, or trading of the Corporation's Common Stock or Nonvoting Common Stock on the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers Automated Quotation System, or would otherwise have a material adverse effect on the Corporation, in any such case due to the Corporation having more than one class of common shares outstanding, then the Board of Directors may by reversion convert all outstanding Nonvoting Common Stock into Common Stock on a share-for-share basis. To the extent practicable, notice of such conversion of Nonvoting Common Stock specifying the date fixed for said conversion shall be mailed, postage prepaid, at least 10 days but not more than 30 days prior to said conversion date to the holders of record of shares of Common Stock and Nonvoting Common Stock at their respective addresses as the same shall appear on the books of the Corporation; provided, however, that no failure or inability to provide such notice shall limit the authority or ability of the Board of Directors to convert all outstanding Nonvoting Common Stock into Common Stock. Immediately prior to the close of business on said conversion date (or, if said conversion date is not a business day, on the next succeeding business day) each outstanding share of Nonvoting Common Stock shall thereupon automatically be converted into a share of Common Stock and each certificate theretofore representing shares of Nonvoting Common Stock shall thereupon and thereafter represent a like number of shares of Common Stock.

#### IV. General.

A. No holder of shares of the Corporation of any class, as such, shall have any preemptive right to subscribe for stock, obligations, warrants, subscription rights or other securities of the Corporation of any class, regardless of when authorized.

B. For the purposes of this Article FIFTH and of any resolution of the Board of Directors providing for the issue of any series of Preferred Stock or of any certificate of amendment filed with the Secretary of State of the State of Delaware (unless otherwise expressly provided in any such resolution or certificate), any class or classes of stock of the Corporation shall be deemed to rank junior to any other class or classes if the rights of the holders thereof shall be subject or subordinate to the rights of the holders of shares of such other class or classes in respect of the receipt of dividends or of amounts distributable upon liquidation, dissolution, or winding up.

SIXTH: Directors. The affairs of the Corporation are to be conducted by a Board of Directors of not fewer than three (3) nor more than twelve (12) members, the number to be set by the directors as provided in the bylaws. The Board of Directors shall have the power to increase or decrease the number of directors on the Board of Directors last approved by the stockholders pursuant to and in accordance with the limitations provided by Delaware law; provided, however, that at no time shall the number of directors be fewer than three (3) nor more than twelve (12) without amendment of this Article. Any additional director or directors elected to fill a vacancy shall be elected by the vote of a majority of the directors then in office, although less than a quorum, and any director so chosen shall hold office for a term that shall expire at the time of the next annual meeting of stockholders at which directors are elected. In no case will a decrease in the number of directors shorten the term of any incumbent director.

SEVENTH: Stockholder Nomination of Director Candidates. Subject to the rights of holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, nominations for the election of directors may be made by the Board of Directors or a committee appointed by the Board of Directors or by any stockholder entitled to vote in the election of directors generally. However, any stockholder entitled to vote in the election of directors generally may nominate one or more persons for election as directors at a meeting only if timely written notice of such nomination or nominations has been given to the Secretary of the Corporation. To be timely, such notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever first occurs. Each such notice to the Secretary shall set forth: (a) the name, age and address of the stockholder who intends to make the nomination; (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) the name, age, business and residence addresses, and principal occupation or employment of each nominee; (d) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (e) such other information regarding each nominee proposed by such stockholder

as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission, had the nominee been nominated, or intended to be nominated by the Board of Directors; and (f) the consent of each nominee to serve as a director of the Corporation if so elected. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation. The presiding officer at the meeting may refuse to acknowledge the nomination of any person not made in compliance with the foregoing procedures.

**EIGHTH: Call of Special Meetings of Stockholders.** Special meetings of stockholders of the Corporation may be called only by the Board of Directors pursuant to a resolution adopted by a majority of the Directors in writing, or by the holders of not less than fifty percent (50%) of all shares entitled to cast votes at the meeting. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

**NINTH: Elimination of Director Liability.** A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after the filing of the Certificate of Incorporation of which this Article is a part to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

**TENTH: Bylaws.** The bylaws for the Corporation may be adopted, amended and repealed by the Board of Directors, subject to repeal or change by action of the stockholders.

**ELEVENTH: Right to Indemnification.**

A. **Indemnification.** The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party, or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Corporation shall be required to indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors of the Corporation.

B. **Prepayment of Expenses.** The Corporation shall pay the expenses of directors and executive officers of the Corporation, and may pay the expenses of all other officers, employees or agents of the Corporation, incurred in defending any proceeding, in advance of its final disposition, provided, however, that the payment of expenses incurred by a director, officer, employee or agent in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the director, officer, employee or agent to repay all amounts advanced if it should be ultimately determined that the director, officer, employee or agent is not entitled to be indemnified under this Article ELEVENTH or otherwise.

C. **Claims.** If a claim for indemnification or payment of expenses under this Article is not paid in full within sixty days after a written claim therefor has been received by the Corporation, the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

D. Non-Exclusivity of Rights. The rights conferred on any person by this Article ELEVENTH shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

E. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity, shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

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

TWELFTH: Election of Directors. Unless and except to the extent that the bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation under the laws of the State of Delaware, does make, file and record this Certificate of Incorporation, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 22nd day of September, 1997.

By: /s/ DANA M. DEMBKOWSKI

\_\_\_\_\_  
Incorporator  
Dana M. Dembkowski

CERTIFICATE OF DESIGNATION  
OF PREFERENCES AND RIGHTS  
OF PREFERRED STOCK, SERIES A,  
OF SYPRIS SOLUTIONS, INC.

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

Sypris Solutions, Inc. (the "Corporation"), a corporation organized under the Delaware General Corporation Law (the "DGCL"), in accordance with Section 103 of the DGCL, DOES HEREBY CERTIFY:

That pursuant to the authority conferred upon the Board of Directors by the Certificate of Incorporation of the Corporation, the Board of Directors as of October 23, 2001 adopted the following resolution, creating a series of Preferred Stock designated as Preferred Stock, Series A:

RESOLVED, that pursuant to the authority conferred upon the Board of Directors of the Corporation (the "Board of Directors"), in accordance with the provisions of its Certificate of Incorporation a series of Preferred Stock of the Corporation be and it hereby is created, and that the designation and amount thereof and the voting powers, preferences and relative, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof, are as follows:

Section 1. Designation and Number of Shares. This series of the Preferred Stock shall be designated as "Series A Preferred Stock" (the "Series A Preferred Stock") with a par value of \$.01 per share. The number of shares initially issuable as the Series A Preferred Stock shall be 11,000; provided, however, that, if more than a total of 11,000 shares of Series A Preferred Stock shall be issuable upon the exercise of Rights (the "Rights") issued pursuant to the Rights Agreement dated as of October 23, 2001, between the Corporation and LaSalle Bank National Association, as Rights Agent (the "Rights Agreement"), the Board of Directors of the Corporation, shall, if then permitted by the DGCL, direct by resolution or resolutions that a certificate of the Corporation be properly executed, acknowledged and filed with the Secretary of State of Delaware providing for the total number of shares issuable as Series A Preferred Stock to be increased (to the extent that the Certificate of Incorporation then permits) to the largest number of whole shares (rounded up to the nearest whole number) issuable upon exercise of such Rights.

Section 2. Dividends or Distributions.

(a) Subject to the prior and superior rights of the holders of shares of any other series of Preferred Stock or other class of capital stock of the Corporation ranking prior and superior to the shares of Series A Preferred Stock with respect to dividends, the holders of shares of the Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the assets of the Corporation legally available therefor, (i) annual dividends payable in cash on January 15 of each year, or such other dates as the Board of Directors of the Corporation shall approve (each such date being referred to herein as an "Annual Dividend Payment Date"), commencing on the first Annual Dividend Payment Date after the first issuance of a share or a fraction of a share of Series A Preferred Stock, in the amount of \$.01 per whole share (rounded to the nearest cent), less the amount of all cash dividends declared on the Series A Preferred Stock pursuant to the following clause (ii) since the immediately preceding Annual Dividend Payment Date or, with respect to the first Annual Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock (the total of which shall not, in any event, be less than zero) and (ii) dividends payable in cash on the payment date for each cash dividend declared on the Common Stock in an amount per whole share (rounded to the nearest cent) equal to the Formula Number (as hereinafter defined) then in effect times the cash dividends then to be paid on each share of Common Stock. In addition, if the Corporation shall pay any dividend or make any distribution on the Common Stock payable in assets,

securities or other forms of non-cash consideration (other than dividends or distributions solely in shares of Common Stock), then, in each such case, the Corporation shall simultaneously pay or make on each outstanding whole share of Series A Preferred Stock a dividend or distribution in like kind equal to the Formula Number then in effect times such dividend or distribution on each share of the Common Stock. As used herein, the "Formula Number" shall be 1,000; provided, however, that, if at any time after October 23, 2001, the Corporation shall (x) declare or pay any dividend on the Common Stock payable in shares of Common Stock or make any distribution on the Common Stock in shares of Common Stock, (y) subdivide (by a stock split or otherwise) the outstanding shares of Common Stock into a larger number of shares of Common Stock or (z) combine (by a reverse stock split or otherwise) the outstanding shares of Common Stock into a smaller number of shares of Common Stock, then, in each such event, the Formula Number shall be adjusted to a number determined by multiplying the Formula Number in effect immediately prior to such event by a fraction, the numerator of which is the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that are outstanding immediately prior to such event (and rounding the result to the nearest whole number); and provided further, that, if at any time after October 23, 2001, the Corporation shall issue any shares of its capital stock in a merger, share exchange, reclassification, or change of the outstanding shares of Common Stock, then, in each such event, the Formula Number shall be appropriately adjusted to reflect such merger, share exchange, reclassification or change so that each share of Preferred Stock continues to be the economic equivalent of a Formula Number of shares of Common Stock prior to such merger, share exchange, reclassification or change.

(b) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in Section 2(a) immediately prior to or at the same time it declares a dividend or distribution on the Common Stock (other than a dividend or distribution solely in shares of Common Stock); provided, however, that, in the event no dividend or distribution (other than a dividend or distribution in shares of Common Stock) shall have been declared on the Common Stock during the period between any Annual Dividend Payment Date and the next subsequent Annual Dividend Payment Date, a dividend of \$.01 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Annual Dividend Payment Date. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a dividend or distribution declared thereon, which record date shall be the same as the record date for any corresponding dividend or distribution on the Common Stock.

(c) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from and after the Annual Dividend Payment Date next preceding the date of original issue of such shares of Series A Preferred Stock; provided, however, that dividends on such shares that are originally issued after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive an annual dividend and on or prior to the next succeeding Annual Dividend Payment Date shall begin to accrue and be cumulative from and after such Annual Dividend Payment Date. Notwithstanding the foregoing, dividends on shares of Series A Preferred Stock that are originally issued prior to the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive an annual dividend on the first Annual Dividend Payment Date shall be calculated as if cumulative from and after the last day of the fiscal quarter next preceding the date of original issuance of such shares. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding and entitled to receive such dividends.

(d) So long as any shares of the Series A Preferred Stock are outstanding, no dividends or other distributions shall be declared, paid or distributed, or set aside for payment or distribution, on the Common Stock, unless, in each case, the dividend required by this Section 2 to be declared on the Series A Preferred Stock shall have been declared and paid.

(e) The holders of the shares of Series A Preferred Stock shall not be entitled to receive any dividends or other distributions, except as provided herein.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(a) Each holder of Series A Preferred Stock shall be entitled to a number of votes equal to the Formula Number then in effect, for each whole share of Series A Preferred Stock held of record on each matter on which holders of the Common Stock or stockholders generally are entitled to vote, multiplied by the maximum number of votes per share which any holder of the Common Stock or stockholders generally then have with respect to such matter (assuming any holding period or other requirement to vote a greater number of shares is satisfied).

(b) Except as otherwise provided herein or by applicable law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock shall vote together as one voting group for the election of directors of the Corporation and on all other matters submitted to a vote of stockholders of the Corporation.

(c) If, at the time of any annual meeting of stockholders for the election of directors, the equivalent of two annual dividends (whether or not consecutive) payable on any share or shares of Series A Preferred Stock are in default, the number of directors constituting the Board of Directors of the Corporation shall be increased by two. In addition to voting together with the holders of Common Stock for the election of other directors of the Corporation, the holders of record of the Series A Preferred Stock, voting separately as a voting group to the exclusion of the holders of Common Stock, shall be entitled at said meeting of stockholders (and at each subsequent annual meeting of stockholders), unless all dividends in arrears have been paid or declared and set apart for payment prior thereto, to vote for the election of two directors of the Corporation, the holders of any Series A Preferred Stock being entitled to cast a number of votes per whole share of Series A Preferred Stock equal to the Formula Number. Until the default in payments of all dividends that permitted the election of said directors shall cease to exist, any director who shall have been so elected pursuant to the next preceding sentence may be removed at any time, either with or without cause, only by the affirmative vote of the holders of the shares of Series A Preferred Stock at the time entitled to cast such number of votes as are required by law for the election of any such director at a special meeting of such holders called for that purpose, and any vacancy thereby created may be filled only by the vote of such holders. If and when such default shall cease to exist, the holders of the Series A Preferred Stock shall be divested of the foregoing special voting rights, subject to reversion in the event of each and every subsequent like default in payments of dividends. Upon the termination of the foregoing special voting rights, the terms of office of all persons who may have been elected directors pursuant to said special voting rights shall forthwith terminate to the extent permitted by law, and the number of directors constituting the Board of Directors shall be reduced by two. The voting rights granted by this Section 3(c) shall be in addition to any other voting rights granted to the holders of the Series A Preferred Stock in this Section 3.

(d) Except as provided herein, in Section 11 or by applicable law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for authorizing or taking any corporate action.

#### Section 4. Certain Restrictions.

(a) Whenever annual dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not

[1] declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

[2] declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

[3] redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A

Preferred Stock; provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

[4] purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (a) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, no distribution shall be made (a) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received an amount equal to the accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, plus an amount equal to the greater of (i) \$.01 per whole share or (ii) an aggregate amount per share equal to the Formula Number then in effect times the aggregate amount to be distributed per share to holders of Common Stock or (b) to the holders of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all other such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up.

Section 6. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, share exchange, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash or any other property, then, in any such case, the then outstanding shares of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per whole share equal to the Formula Number then in effect times the aggregate amount of stock, securities, cash or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is exchanged or changed. In the event both this Section 6 and Section 2 appear to apply to a transaction, this Section 6 will control.

Section 7. No Redemption; No Sinking Fund.

(a) The shares of Series A Preferred Stock shall not be subject to redemption by the Corporation or at the option of any holder of Series A Preferred Stock; provided, however, that the Corporation may purchase or otherwise acquire outstanding shares of Series A Preferred Stock in the open market or by offer to any holder or holders of shares of Series A Preferred Stock.

(b) The shares of Series A Preferred Stock shall not be subject to or entitled to the operation of a retirement or sinking fund.

Section 8. Ranking. The Series A Preferred Stock shall rank junior to all other series of Preferred Stock of the Corporation, unless the Board of Directors shall specifically determine otherwise in fixing the powers, preferences and relative, participating, optional and other special rights of the shares of such series and the qualifications, limitations and restrictions thereof.

Section 9. Fractional Shares. The Series A Preferred Stock shall be issuable upon exercise of the Rights issued pursuant to the Rights Agreement in whole shares or in any fraction of a share that is one-thousandth (1/1,000) of a share or any integral multiple of such fraction which shall entitle the holder, in proportion to such holder's fractional shares, to receive dividends, exercise voting rights, participate in distributions and have the benefit of all other rights of holders of Series A Preferred Stock. In lieu of fractional shares, the Corporation, prior to

the first issuance of a share or a fraction of a share of Series A Preferred Stock, may elect (a) to make a cash payment as provided in the Rights Agreement for fractions of a share other than one-thousandth (1/1,000) of a share or any integral multiple thereof or (b) to issue depository receipts evidencing such authorized fraction of a share of Series A Preferred Stock pursuant to an appropriate agreement between the Corporation and a depository selected by the Corporation; provided that such agreement shall provide that the holders of such depository receipts shall have all the rights, privileges and preferences to which they are entitled as holders of the Series A Preferred Stock.

Section 10. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock, \$.01 par value per share, of the Corporation, undesignated as to series, and may thereafter be reissued as part of a new series of such Preferred Stock as permitted by law.

Section 11. Amendment. None of the powers, preferences and relative, participating, optional and other special rights of the Series A Preferred Stock as provided herein or in the Certificate of Incorporation shall be amended in any manner that would alter or change the powers, preferences, rights or privileges of the holders of Series A Preferred Stock so as to affect such holders adversely without the affirmative vote of the holders of at least 66<sup>2/3</sup>% of the outstanding shares of Series A Preferred Stock, voting as a separate voting group; provided, however, that no such amendment approved by the holders of at least 66<sup>2/3</sup>% of the outstanding shares of Series A Preferred Stock shall be deemed to apply to the powers, preferences, rights or privileges of any holder of shares of Series A Preferred Stock originally issued upon exercise of a Right after the time of such approval without the approval of such holder.

IN WITNESS WHEREOF, Sypris Solutions, Inc. has caused this Certificate of Designation to be duly executed by its authorized officer and attested by its Secretary as of the 23<sup>rd</sup> day of October, 2001.

SYPRIS SOLUTIONS, INC.

By /s/ JEFFREY T. GILL

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Jeffrey T. Gill  
Title: PRESIDENT

ATTEST:

/s/ RICHARD L. DAVIS

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Richard L. Davis, Secretary

**CERTIFICATE OF AMENDMENT  
TO  
CERTIFICATE OF INCORPORATION  
OF  
SYPRIS SOLUTIONS, INC.**

Sypris Solutions, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"),

DOES HEREBY CERTIFY:

FIRST: That at meetings of the Board of Directors of the Corporation, resolutions were duly adopted by the Board of Directors of the Corporation pursuant to Section 242 of the General Corporation Law of the State of Delaware, setting forth amendments to Articles Fifth, Sixth and Eighth of the Certificate of Incorporation of the Corporation and declaring said amendments to be advisable, and submitting said amendments to the stockholders of the Corporation for consideration thereof. The resolutions setting forth the proposed amendments are as follows:

RESOLVED, that the Board of Directors hereby authorizes and approves the following amendment to Article Fifth of the Certificate of Incorporation of this Corporation, the text of such article, as so amended, to read in its entirety as follows:

"FIFTH: Capital Stock.

I. Authorized Capital Stock. The total number of shares which are authorized to be issued by the Corporation is 30,000,000 shares of common stock having a \$.01 par value per share ("Common Stock"), 10,000,000 shares of nonvoting common stock having a \$.01 par value per share ("Nonvoting Common Stock"), and 1,000,000 shares of preferred stock having a \$.01 par value per share ("Preferred Stock").

A description of the foregoing classes of stock of the Corporation and a statement of the voting powers, preferences and relative rights and the qualifications, limitations or restrictions granted to or imposed upon the shares of each class is as follows:

II. Preferred Stock

A. Authority is hereby vested in the Board of Directors, by resolution, to divide any or all of the authorized shares of Preferred Stock into series and, within the limitations imposed by law and this Certificate of Incorporation, to fix and determine as to each such series:

- [1] The voting rights and powers, if any, of the holders of shares of such series;
- [2] The number of shares and designation of such series;
- [3] The annual dividend rate;

[4] The prices at, and the terms and conditions on which, shares of such series may be redeemed;

[5] The amounts payable on shares of such series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;

[6] The terms, if any, upon which shares of such series may be convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes, including the price or prices and the rate of conversion or exchange, any adjustments thereof, and all other terms and conditions;

[7] The sinking fund provisions, if any, for the redemption or purchase of shares of such series; and

[8] Such other provisions as may be fixed by the Board of Directors of the Corporation pursuant to the Delaware General Corporation Law.

B. All shares of any one series of Preferred Stock shall be identical with each other in all respects, except that shares of any one series issued at different times may differ as to the dates from which dividends thereon shall be cumulative.

C. The Corporation may at any time permitted by the resolution adopted by the Board of Directors providing for the issue of any series of Preferred Stock and at the redemption price or prices and on the terms and conditions stated in said resolution, redeem the whole or any part of the shares of any series of Preferred Stock at the time outstanding.

D. Except when otherwise herein or by statute specifically provided, or except as provided by the resolution adopted by the Board of Directors providing for the issue of any series, the holders of shares of Preferred Stock shall not be entitled to vote at the election of directors or on any question arising at any meeting of stockholders of the Corporation.

E. To the extent permitted by the Delaware General Corporation Law, the shares of Preferred Stock shall be convertible into other shares of the capital stock of this Corporation upon such terms and conditions and at such rates of conversion or exchange as may be provided by the resolution adopted by the Board of Directors providing for the issue of any series.

III. Common Stock and Nonvoting Common Stock. The Common Stock and Nonvoting Common Stock are identical, in all respects, except as follows:

A. Each share of Common Stock entitles the holder thereof to one vote on each matter submitted to a stockholders' vote, while no shares of Nonvoting Common Stock shall have any voting rights, except for those voting rights required by the Delaware General Corporation Law.

B. Subject to the limitations prescribed herein, holders of the Common Stock and Nonvoting Common Stock shall participate equally in any dividends (payable in cash, stock or property) and stock splits, when and as declared by the Board of Directors, out of assets of the Corporation legally available therefor; provided, however, that, in the event of a stock split, or a pro rata stock dividend of like shares declared on outstanding shares, the holders of Common Stock shall receive shares of Common Stock and the holders of Nonvoting Common Stock shall receive shares of Nonvoting Common Stock.

C. In the event the Corporation is liquidated, dissolved or wound up, whether voluntarily or involuntarily, the holders of the Common Stock and Nonvoting Common Stock shall participate equally in any distribution. A merger or consolidation of the Corporation with or into any other corporation or a sale or conveyance of all or any part of the assets of the Corporation (which shall not in fact result in the liquidation of the Corporation and the distribution of assets to stockholders) shall not be deemed to be a voluntary or involuntary liquidation or dissolution or winding up of the Corporation within the meaning of this paragraph.

D. If at any time while there are shares of Common Stock and Nonvoting Common Stock issued and outstanding, it shall be determined by the Board of Directors, in its sole discretion, that legislation or regulations are enacted or any judicial or administrative determination is made which would prohibit the quotation, listing, or trading of the Corporation's Common Stock or Nonvoting Common Stock on the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers Automated Quotation System, or would otherwise have a material adverse effect on the Corporation, in any such case due to the Corporation having more than one class of common shares outstanding, then the Board of Directors may by reversion convert all outstanding Nonvoting Common Stock into Common Stock on a share-for-share basis. To the extent practicable, notice of such conversion of Nonvoting Common Stock specifying the date fixed for said conversion shall be mailed, postage prepaid, at least 10 days but not more than 30 days prior to said conversion date to the holders of record of shares of Common Stock and Nonvoting Common Stock at their respective addresses as the same shall appear on the books of the Corporation; provided, however, that no failure or inability to provide such notice shall limit the authority or ability of the Board of Directors to convert all outstanding Nonvoting Common Stock into Common Stock. Immediately prior to the close of business on said conversion date (or, if said conversion date is not a business day, on the next succeeding business day) each outstanding share of Nonvoting Common Stock shall thereupon automatically be converted into a share of Common Stock and each certificate theretofore representing shares of Nonvoting Common Stock shall thereupon and thereafter represent a like number of shares of Common Stock.

#### IV. General.

A. No holder of shares of the Corporation of any class, as such, shall have any preemptive right to subscribe for stock, obligations, warrants, subscription rights or other securities of the Corporation of any class, regardless of when authorized.

B. For the purposes of this Article FIFTH and of any resolution of the Board of Directors providing for the issue of any series of Preferred Stock or of any certificate of amendment filed with the Secretary of State of the State of Delaware (unless otherwise expressly provided in any such resolution or certificate), any class or classes of stock of the Corporation shall be deemed to rank junior to any other class or classes if the rights of the holders thereof shall be subject or subordinate to the rights of the holders of shares of such other class or classes in respect of the receipt of dividends or of amounts distributable upon liquidation, dissolution, or winding up.”

RESOLVED, that the Board of Directors hereby authorizes and approves the following amendments to Articles Sixth and Eighth of the Certificate of Incorporation of this Corporation, the texts of such articles, as so amended, to read in their entirety as follows:

#### “SIXTH: Directors.

A. The affairs of the Corporation are to be conducted by a Board of Directors of not fewer than three (3) nor more than twelve (12) members, the number to be set by the directors as provided in the Bylaws of the Corporation. The directors shall be divided into three classes as nearly equal in number as possible. Class I directors shall be elected initially for a term expiring at the annual meeting of stockholders held in 2003, Class II directors shall be elected initially for a

term expiring at the annual meeting of stockholders held in 2004, and Class III directors shall be elected initially for a term expiring at the annual meeting of stockholders held in 2005. Thereafter, directors chosen to succeed those whose terms expire at such annual meeting shall be elected for a term of office expiring at the third succeeding annual meeting of stockholders following their election. In the event of any increase or decrease in the number of authorized directorships, the newly created or eliminated directorships shall be apportioned by the Board of Directors among the classes as equally as possible. All directors shall hold office until the expiration of the term for which elected, and until their respective successors are elected, except in the case of the death, resignation or removal of any director. Whenever a vacancy occurs on the Board of Directors, a majority of the remaining directors, although less than a quorum, shall have the power to fill the vacancy by electing a successor director to fill that portion of the unexpired term resulting from the vacancy. Directors elected to fill a vacancy shall hold office until the term of the Class to which they shall have been elected expires.

B. Notwithstanding the foregoing, whenever the holders of any series of Preferred Stock issued by the Corporation shall have the right, voting separately by series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of such series of Preferred Stock as fixed by the Board of Directors, and such directors so elected shall not be divided into classes pursuant to this Article Sixth unless expressly provided by the terms of such series.

C. Directors of the Corporation may be removed by the affirmative vote of the holders of not less than eighty percent (80%) of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote.

D. Notwithstanding any other provision of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of not less than eighty percent (80%) of all shares of capital stock of the Corporation issued and outstanding and entitled to vote shall be required to amend or repeal, or to adopt any provision inconsistent with this Article Sixth.”

“EIGHTH: Stockholder Action; Call of Special Meetings of Stockholders.

A. No action required or permitted to be taken by the stockholders of the Corporation at any duly called annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

B. Special meetings of the stockholders of the Corporation may be called only by the Board of Directors pursuant to a resolution adopted by a majority of the Directors in writing, or by the holders of not less than eighty percent (80%) of all shares entitled to cast votes at the meeting. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

C. Notwithstanding any other provision of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of not less than eighty percent (80%) of all shares of capital stock of the Corporation issued and outstanding and entitled to vote shall be required to amend or repeal, or to adopt any provision inconsistent with this Article Eighth.”

SECOND: That thereafter, pursuant to resolutions of its Board of Directors, the annual meeting of the stockholders of the Corporation was held, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, at which meeting the necessary number of shares as required by statute were voted in favor of each of the foregoing amendments.

THIRD: That each of the foregoing amendments was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said Corporation has caused this certificate to be signed by Jeffrey T. Gill, its President and Chief Executive Officer, as of this 7th day of May, 2002.

SYPRIS SOLUTIONS, INC.

By: /s/ JEFFREY T. GILL

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Jeffrey T. Gill, President and Chief  
Executive Officer

**AMENDED CERTIFICATE OF DESIGNATION OF  
SYPRIS SOLUTIONS, INC.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

Sypris Solutions, Inc. (the "Corporation"), a corporation organized under the Delaware General Corporation Law (the "DGCL"), in accordance with Section 103 of the DGCL, DOES HEREBY CERTIFY:

That pursuant to the authority conferred upon the Board of Directors of the Corporation by the Certificate of Incorporation of the Corporation and a Certificate of Designation of Preferences and Rights of Preferred Stock, Series A, of the Corporation filed with the Delaware Secretary of State on October 24, 2001, the Board of Directors of the Corporation has authorized and directed that the number of shares of Preferred Stock, Series A, be increased from 11,000 shares to 18,400 shares pursuant to a resolution which was adopted by the Board of Directors on May 7, 2002.

IN WITNESS WHEREOF, Sypris Solutions, Inc. has caused this Certificate to be duly executed by its authorized officer and attested by its Secretary as of the 7<sup>th</sup> day of May, 2002.

SYPRIS SOLUTIONS, INC.

By: /s/ JEFFREY T. GILL

\_\_\_\_\_  
Jeffrey T. Gill  
Title: President & CEO

ATTEST:

/s/ RICHARD L. DAVIS

\_\_\_\_\_  
Richard L. Davis, Secretary

**AMENDED CERTIFICATE OF DESIGNATION OF  
SYPRIS SOLUTIONS, INC.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

Sypris Solutions, Inc. (the "Corporation"), a corporation organized under the Delaware General Corporation Law (the "DGCL"), in accordance with Section 103 of the DGCL, DOES HEREBY CERTIFY:

That pursuant to the authority conferred upon the Board of Directors of the Corporation by the Certificate of Incorporation of the Corporation and a Certificate of Designation of Preferences and Rights of Preferred Stock, Series A, of the Corporation filed with the Delaware Secretary of State on October 24, 2001, as amended May 7, 2002, the Board of Directors of the Corporation has authorized and directed that the number of shares of Preferred Stock, Series A, be increased from 18,400 shares to 24,850 shares pursuant to a resolution which was adopted by the Board of Directors on April 27, 2004.

IN WITNESS WHEREOF, Sypris Solutions, Inc. has caused this Certificate to be duly executed by its authorized officer and attested by its Secretary as of the 27th day of April, 2004.

SYPRIS SOLUTIONS, INC.

By: /s/ JEFFREY T. GILL

\_\_\_\_\_  
Jeffrey T. Gill  
Title: President & CEO

ATTEST:

/s/ JOHN R. MCGEENEY

\_\_\_\_\_  
John R. McGeeney, Secretary

SYPRIS SOLUTIONS, INC.

\$55,000,000  
Aggregate Principal Amount  
Senior Notes

\$7,500,000 4.73% Senior Notes, Series A  
Due June 30, 2009

\$27,500,000 5.35% Senior Notes, Series B  
Due June 30, 2011

\$20,000,000 5.78% Senior Notes, Series C  
Due June 30, 2014

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NOTE PURCHASE AGREEMENT

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Dated as of June 1, 2004

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Series A PPN: 871655 A\* 7  
Series B PPN: 871655 A@ 5  
Series C PPN: 871655 A# 3

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SYPRIS SOLUTIONS, INC.  
101 Bullitt Lane, Suite 450  
Louisville, Kentucky 40222  
(502) 329-2000  
Fax: (502) 329-2050

\$55,000,000  
Aggregate Principal Amount  
Senior Notes

\$7,500,000 4.73% Senior Notes, Series A, due June 30, 2009  
\$27,500,000 5.35% Senior Notes, Series B, due June 30, 2011  
\$20,000,000 5.78% Senior Notes, Series C, due June 30, 2014

Dated as of June 1, 2004

TO EACH OF THE PURCHASERS LISTED IN  
THE ATTACHED SCHEDULE A:

Ladies and Gentlemen:

SYPRIS SOLUTIONS, INC., a Delaware corporation (the "Company"), agrees with you as follows:

**1. AUTHORIZATION OF NOTES.**

The Company has authorized the issue and sale of \$55,000,000 aggregate principal amount of Senior Notes, consisting of \$7,500,000 4.73% Senior Notes, Series A, due June 30, 2009 (the "Series A Notes"), \$27,500,000 5.35% Senior Notes, Series B, due June 30, 2011 (the "Series B Notes") and \$20,000,000 5.78% Senior Notes, Series C, due June 30, 2014 (the "Series C Notes" and collectively with the Series A Notes and Series B Notes, the "Notes", such term to include any such Notes issued in substitution therefor pursuant to Section 13 of this Agreement). The Notes shall be substantially in the form set out in Exhibits 1(a), 1(b) or 1(c), as appropriate, with such changes therefrom, if any, as may be approved by you, the Other Purchasers and the Company. Certain capitalized terms used in this Agreement are defined in Schedule B; references to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement. Subject to Section 22, the Notes will be guaranteed by any Subsidiary that is or in the future becomes a guarantor of, or otherwise becomes obligated in respect of, any Debt to banks under the Credit Agreement (individually, a "Subsidiary Guarantor" and collectively, the "Subsidiary Guarantors") pursuant to a guaranty in substantially the form of Exhibit 1(d) (the "Subsidiary Guaranty"). The Notes will be unsecured and will rank *pari passu* with the Company's Debt to banks under the Credit Agreement and with all other senior unsecured Debt of the Company.

**2. SALE AND PURCHASE OF NOTES.**

Subject to the terms and conditions of this Agreement, the Company will issue and sell to you and each of the other purchasers named in Schedule A (the "Other Purchasers"), and you and the Other Purchasers will purchase from the Company, at the Closings provided for in Section 3, Notes in the principal amount and series specified opposite your names in Schedule A at the purchase price of 100% of the principal amount thereof. Your obligation hereunder and the obligations of the Other Purchasers are several and not joint obligations and you shall have no obligation and no liability to any Person for the performance or non-performance by any Other Purchaser hereunder.

### 3. CLOSINGS.

The sale and purchase of the Notes to be purchased by you and the Other Purchasers shall occur at the offices of Gardner Carton & Douglas LLP, 191 North Wacker Drive, Suite 3700, Chicago, Illinois 60606-1698, at 9:00 a.m., Chicago time, at closings on June 10, 2004 (the "First Closing"), on August 19, 2004 (the "Second Closing") and on a Business Day on or prior to September 30, 2004 as agreed upon by the Company and the purchasers that are scheduled to purchase Notes at such Closing (the "Third Closing" and, together with the First Closing and the Second Closing, the "Closings"). The date or time of any Closing may be changed to such other Business Day as may be agreed upon by the Company and the purchasers that are scheduled to purchase Notes at such Closing. At the Closing applicable to your purchase the Company will deliver to you the Notes to be purchased by you in the form of a single Note (or such greater number of Notes in denominations of at least \$100,000 as you may request) dated the date of such Closing and registered in your name (or in the name of your nominee), against delivery by you to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds for the account of the Company to account number 615694528 (Sypris Solutions Operating Account) at Bank One, N.A., 416 W. Jefferson Street, Louisville, Kentucky, 40202, Attention: Elvia Schuler (502-566-2849), ABA routing number 083000137. If at such Closing the Company shall fail to tender such Notes to you as provided above in this Section 3, or any of the conditions specified in Section 4 shall not have been fulfilled to your satisfaction, you shall, at your election, be relieved of all further obligations under this Agreement, without thereby waiving any rights you may have by reason of such failure or such nonfulfillment.

The Company and the Purchasers scheduled to purchase Notes at the Third Closing agree, if the conditions set forth in Section 4.11 have been fulfilled on or before the date of the Second Closing, to use their reasonable efforts to cause the Third Closing to occur on the date of the Second Closing.

### 4. CONDITIONS TO CLOSING.

The Company's obligation to issue and sell the Notes to be purchased and paid for by the Purchasers that are scheduled to purchase Notes at the Third Closing is subject to the fulfillment, prior to or at such Closing, of the condition set forth in Section 4.11.

Your obligation to purchase and pay for the Notes to be sold to you at the Closing applicable to your purchase is subject to the fulfillment to your satisfaction, prior to or at such Closing, of the following conditions:

#### 4.1. Representations and Warranties.

The representations and warranties of the Company in this Agreement shall be correct when made and at the time of such Closing.

#### 4.2. Performance; No Default.

The Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at such Closing and after giving effect to the issue and sale of the Notes (and the application of the proceeds thereof as contemplated by Section 5.14) no Default or Event of Default shall have occurred and be continuing.

#### 4.3. Compliance Certificates.

(a) Officer's Certificate. The Company shall have delivered to you an Officer's Certificate, dated the date of such Closing, certifying that the conditions specified in Sections 4.1, 4.2 and 4.9 have been fulfilled.

(b) Secretary's Certificate. Each of the Company and each Subsidiary Guarantor shall have delivered to you a certificate of its Secretary or an Assistant Secretary certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Notes and the Agreement or the Subsidiary Guaranty, as the case may be.

#### **4.4. Opinions of Counsel.**

You shall have received opinions in form and substance satisfactory to you, dated the date of such Closing (a) from Wyatt, Tarrant & Combs, LLP special counsel for the Company and the Subsidiary Guarantors, covering the matters set forth in Exhibit 4.4(a) and covering such other matters incident to the transactions contemplated hereby as you or your counsel may reasonably request (and the Company instructs its counsel to deliver such opinion to you), (b) from John McGeeney, General Counsel of the Company, covering the matters set forth in Exhibit 4.4(b) and covering such other matters incident to the transactions contemplated hereby as you or your counsel may reasonably request (and the Company instructs its counsel to deliver such opinion to you), and (c) from Gardner Carton & Douglas LLP, your special counsel in connection with such transactions, substantially in the form set forth in Exhibit 4.4(c) and covering such other matters incident to such transactions as you may reasonably request.

#### **4.5. Purchase Permitted By Applicable Law, etc.**

On the date of such Closing your purchase of Notes shall (i) be permitted by the laws and regulations of each jurisdiction to which you are subject, without recourse to provisions (such as Section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (ii) not violate any applicable law or regulation (including, without limitation, Regulation U, T or X of the Board of Governors of the Federal Reserve System) and (iii) not subject you to any tax, penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the date hereof. If requested by you, you shall have received an Officer's Certificate certifying as to such matters of fact as you may reasonably specify to enable you to determine whether such purchase is so permitted.

#### **4.6. Sale of Other Notes.**

Contemporaneously with or prior to each Closing the Company shall sell or shall have sold to the Other Purchasers and the Other Purchasers shall purchase or shall have purchased the Notes to be purchased by them as specified in Schedule A at such Closing or any prior Closing.

#### **4.7. Payment of Special Counsel Fees.**

Without limiting the provisions of Section 15.1, the Company shall have paid on or before such Closing the reasonable fees, charges and disbursements of your special counsel referred to in Section 4.4 to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to such Closing.

#### **4.8. Private Placement Numbers.**

A Private Placement Number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the Securities Valuation Office of the National Association of Insurance Commissioners) shall have been obtained for each series of Notes by Gardner Carton & Douglas for the Notes.

#### **4.9. Changes in Corporate Structure.**

The Company shall not have changed its jurisdiction of incorporation or been a party to any merger or consolidation and shall not have succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

#### **4.10. Subsidiary Guaranty.**

Each Subsidiary Guarantor shall have executed and delivered the Subsidiary Guaranty in favor of you and the Other Purchasers.

#### **4.11. Consummation of Acquisition.**

As a condition to the Third Closing, at or prior to such Closing, the Company shall have consummated the acquisition of certain assets of Dana Corporation located in Toluca, Mexico, or shall have entered into a binding agreement to acquire such assets that specifies a closing date not more than 30 days after the date of execution of such agreement, provided that (unless the Company and the Purchasers scheduled to purchase Notes at the Third Closing otherwise agree) if such specified closing date is not on or before October 30, 2004, the Purchasers scheduled to purchase Notes at the Third Closing shall have no obligation to purchase any Notes at such Closing.

#### **4.12. Proceedings and Documents.**

All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to you and your special counsel, and you and your special counsel shall have received all such counterpart originals or certified or other copies of such documents as you or they may reasonably request.

### **5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.**

The Company represents and warrants to you that:

#### **5.1. Organization; Power and Authority.**

The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and the Notes and to perform the provisions hereof and thereof.

#### **5.2. Authorization, etc.**

This Agreement and the Notes have been duly authorized by all necessary corporate action on the part of the Company, and this Agreement constitutes, and upon execution and delivery thereof each Note will constitute, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

The Subsidiary Guaranty has been duly authorized by all necessary corporate action on the part of each Subsidiary Guarantor and upon execution and delivery thereof will constitute the legal, valid and binding obligation of each Subsidiary Guarantor, enforceable against each Subsidiary Guarantor in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

### **5.3. Disclosure.**

The Company, through its agents, LaSalle Debt Capital Markets and SunTrust Capital Markets, Inc., has delivered to you and each Other Purchaser a copy of a Private Placement Memorandum, dated April 2004 (the "Memorandum"), relating to the transactions contemplated hereby. Except as disclosed in Schedule 5.3, this Agreement, the Memorandum, the documents, certificates or other writings identified in Schedule 5.3 and the financial statements listed in Schedule 5.5, taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as disclosed in the Memorandum or as expressly described in Schedule 5.3, or in one of the documents, certificates or other writings identified therein, or in the financial statements listed in Schedule 5.5, since December 31, 2003, there has been no change in the financial condition, operations, business or properties of the Company or any of its Subsidiaries except changes that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

### **5.4. Organization and Ownership of Shares of Subsidiaries.**

(a) Schedule 5.4 is (except as noted therein) a complete and correct list of the Company's Subsidiaries, showing, as to each Subsidiary, the correct name thereof, the jurisdiction of its organization, and the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by the Company and each other Subsidiary.

(b) All of the outstanding shares of capital stock or similar equity interests of each Subsidiary shown in Schedule 5.4 as being owned by the Company and its Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by the Company or another Subsidiary free and clear of any Lien (except as otherwise disclosed in Schedule 5.4).

(c) Each Subsidiary identified in Schedule 5.4 is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact.

### **5.5. Financial Statements.**

The Company has delivered to you and each Other Purchaser copies of the financial statements of the Company and its Subsidiaries listed on Schedule 5.5. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates specified in such Schedule and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments).

### **5.6. Compliance with Laws, Other Instruments, etc.**

The execution, delivery and performance by the Company of this Agreement and the Notes will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of the Company or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other Material agreement or instrument to which the Company or any Subsidiary is bound or by which the Company or any Subsidiary or any of their respective properties may be bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to the Company or any Subsidiary or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Company or any Subsidiary.

The execution, delivery and performance by each Subsidiary Guarantor of the Subsidiary Guaranty will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of such Subsidiary Guarantor under any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other Material agreement or instrument to which such Subsidiary Guarantor is bound or by which such Subsidiary Guarantor or any of its properties may be bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to such Subsidiary Guarantor or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to such Subsidiary Guarantor.

#### **5.7. Governmental Authorizations, etc.**

Except for any filings under federal or state securities laws that have been or, prior to the date of the First Closing or the Second Closing, as applicable, will have been made, no consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by the Company of this Agreement or the Notes or the execution, delivery or performance by each Subsidiary Guarantor of the Subsidiary Guaranty.

#### **5.8. Litigation; Observance of Statutes and Orders.**

(a) There are no actions, suits or proceedings pending or, to the knowledge of the Company threatened against or affecting the Company or any Subsidiary or any property of the Company or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(b) Neither the Company nor any Subsidiary is in default under any term of any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including Environmental Laws and the USA Patriot Act) of any Governmental Authority, which default or violation, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

#### **5.9. Taxes.**

The Company and its Subsidiaries have filed all income tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which is not individually or in the aggregate Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Company or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. The Federal income tax liabilities of the Company and its Subsidiaries have been determined by the Internal Revenue Service and paid for all fiscal years up to and including the fiscal year ended December 31, 1997.

#### **5.10. Title to Property; Leases.**

The Company and its Subsidiaries have good and sufficient title to their respective Material properties, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 or purported to have been acquired by the Company or any Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement, except for those defects in title and Liens that, individually or in the aggregate, would not have a Material Adverse Effect. All Material leases are valid and subsisting and are in full force and effect in all material respects.

### 5.11. Licenses, Permits, etc.

Except as disclosed in Schedule 5.11,

(a) the Company and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto necessary for the conduct of their business without known conflict with the rights of others;

(b) to the best knowledge of the Company, no product of the Company or any Subsidiary infringes any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other Person; and

(c) to the best knowledge of the Company, there is no violation by any Person of any right of the Company or any Subsidiary with respect to any patent, copyright, service mark, trademark, trade name or other right owned or used by the Company or any Subsidiary;

except, in each instance, for the lack of ownership or possession, conflicts or violations that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

### 5.12. Compliance with ERISA.

(a) The Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in Section 3 of ERISA), and no event, transaction or condition has occurred or exists that would reasonably be expected to result in the incurrence of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to Section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities by more than \$15,000,000 in the aggregate for all Plans. The term "benefit liabilities" has the meaning specified in section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in section 3 of ERISA.

(c) The Company and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(d) The expected postretirement benefit obligation (determined as of the last day of the Company's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Company and its Subsidiaries is not Material.

(e) The execution and delivery of this Agreement and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by the Company in the first sentence of this Section 5.12(e) is made in reliance upon and subject to the accuracy of your representation in Section 6.2 as to the sources of the funds used to pay the purchase price of the Notes to be purchased by you.

### **5.13. Private Offering by the Company.**

Neither the Company nor anyone acting on its behalf has offered the Notes, the Subsidiary Guaranty or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any person other than you, the Other Purchasers and not more than 13 other Institutional Investors, each of which has been offered the Notes and the Subsidiary Guaranty at a private sale for investment. Neither the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes or the Subsidiary Guaranty to the registration requirements of Section 5 of the Securities Act.

### **5.14. Use of Proceeds; Margin Regulations.**

The Company will apply the proceeds of the sale of the Notes to repay Debt of the Company as set forth in Schedule 5.14 and for general corporate purposes. No part of the proceeds from the sale of the Notes will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute more than 1% of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock will constitute more than 1% of the value of such assets. As used in this Section, the terms “margin stock” and “purpose of buying or carrying” shall have the meanings assigned to them in said Regulation U.

### **5.15. Existing Debt; Future Liens.**

(a) Except as described therein, Schedule 5.15 sets forth a complete and correct list of all outstanding Debt of the Company and its Subsidiaries as of March 31, 2004, since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Debt of the Company or its Subsidiaries. Neither the Company nor any Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Debt of the Company or any Subsidiary and no event or condition exists with respect to any Debt of the Company or any Subsidiary that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Debt to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Except as disclosed in Schedule 5.15, neither the Company nor any Subsidiary has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien not permitted by Section 10.4.

### **5.16. Foreign Assets Control Regulations, Anti-Terrorism Order, etc.**

Neither the sale of the Notes by the Company hereunder nor its use of the proceeds thereof will violate (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (c) the Anti-Terrorism Order or (d) the United States Foreign Corrupt Practices Act of 1997, as amended. Without limiting the foregoing, neither the Company nor any Subsidiary (i) is a blocked person described in Section 1 of the Anti-Terrorism Order or (ii) engages in any dealings or transactions, or is otherwise associated, with any such person.

#### **5.17. Status under Certain Statutes.**

Neither the Company nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, as amended, the Public Utility Holding Company Act of 1935, as amended, the ICC Termination Act, as amended, or the Federal Power Act, as amended.

#### **5.18. Environmental Matters.**

Neither the Company nor any Subsidiary has knowledge of any claim or has received any notice of any claim, and to the knowledge of the Company no proceeding has been instituted raising any claim against the Company or any Subsidiary or any of their respective real properties now or formerly owned, leased or operated by any of them or other assets, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(a) Neither the Company nor any Subsidiary has knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(b) Neither the Company nor any Subsidiary has stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them and has not disposed of any Hazardous Materials in a manner contrary to any Environmental Laws in each case in any manner that would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; and

(c) All buildings on all real properties now owned, leased or operated by the Company or any Subsidiary are in compliance with applicable Environmental Laws, except where failure to comply would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

#### **5.19. Solvency of Subsidiary Guarantors.**

After giving effect to the transactions contemplated herein, (i) the present fair salable value of the assets of each Subsidiary Guarantor is in excess of the amount that will be required to pay its probable liability on its existing debts as said debts become absolute and matured, (ii) each Subsidiary Guarantor has received reasonably equivalent value for executing and delivering the Subsidiary Guaranty, (iii) the property remaining in the hands of each Subsidiary Guarantor is not an unreasonably small capital, and (iv) each Subsidiary Guarantor is able to pay its debts as they mature.

### **6. REPRESENTATIONS OF THE PURCHASERS.**

#### **6.1. Purchase for Investment.**

You represent that you are purchasing the Notes for your own account or for one or more separate accounts maintained by you or for the account of one or more pension or trust funds and not with a view to the distribution thereof, provided that the disposition of your or their property shall at all times be within your or their control. You understand that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes. You represent that you are an “accredited investor” within the meaning of subparagraph (a)(1), (2), (3) or (7) of Rule 501 of Regulation D under the Securities Act.

## 6.2. Source of Funds.

You represent that at least one of the following statements is an accurate representation as to each source of funds (a “Source”) to be used by you to pay the purchase price of the Notes to be purchased by you hereunder:

(a) the Source is an “insurance company general account” (as the term is defined in the United States Department of Labor’s Prohibited Transaction Exemption (“PTE”) 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the “NAIC Annual Statement”)) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser’s state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser’s fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 (issued January 29, 1990), or (ii) a bank collective investment fund, within the meaning of PTE 91-38 (issued July 12, 1991) and, except as you have disclosed to the Company in writing pursuant to this paragraph (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an “investment fund” (within the meaning of Part V of PTE 84-14 (the “QPAM Exemption”)) managed by a “qualified professional asset manager” or “QPAM” (within the meaning of Part V of the QPAM Exemption), no employee benefit plan’s assets that are included in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Section V(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM (applying the definition of “control” in Section V(e) of the QPAM Exemption) owns a 5% or more interest in the Company and (i) the identity of such QPAM and (ii) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Company in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a “plan(s)” (within the meaning of Section IV of PTE 96-23 (the “INHAM Exemption”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV of the INHAM exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Section IV(h) of the INHAM Exemption) owns a 5% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this paragraph (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 6.2, the terms “employee benefit plan”, “governmental plan” and “separate account” shall have the respective meanings assigned to such terms in Section 3 of ERISA.

## **7. INFORMATION AS TO COMPANY.**

### **7.1. Financial and Business Information.**

The Company will deliver to each holder of Notes that is an Institutional Investor:

(a) Quarterly Statements — within 60 days (or such other shorter period within which Quarterly Reports on Form 10-Q are required to be timely filed with the Securities and Exchange Commission, including any extension permitted by Rule 12b-25 of the Exchange Act) after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of,

(i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarter,

(ii) consolidated statements of income and changes in stockholders’ equity of the Company and its Subsidiaries for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter, and

(iii) consolidated statements of cash flows of the Company and its Subsidiaries for such quarter or (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, provided that delivery within the time period specified above of copies of the Company’s Quarterly Report on Form 10-Q prepared in compliance with the requirements therefor and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 7.1(a);

(b) Annual Statements — within 105 days (or such other shorter period within which Annual Reports on Form 10-K are required to be timely filed with the Securities and Exchange Commission, including any extension permitted by Rule 12b-25 of the Exchange Act) after the end of each fiscal year of the Company, duplicate copies of,

(i) a consolidated balance sheet of the Company and its Subsidiaries, as at the end of such year, and

(ii) consolidated statements of income, changes in stockholders’ equity and cash flows of the Company and its Subsidiaries for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances, provided that the delivery within the time period specified above of the Company's Annual Report on Form 10-K for such fiscal year (together with the Company's annual report to stockholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements therefor and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 7.1(b);

(c) SEC and Other Reports — promptly upon their becoming available, one copy of (i) each financial statement, report, notice or proxy statement sent by the Company or any Subsidiary to public securities holders generally, and (ii) each regular or periodic report, each registration statement (other than a Registration Statement on Form S-8) that shall have become effective (without exhibits except as expressly requested by such holder), and each prospectus and all amendments thereto filed by the Company or any Subsidiary with the Securities and Exchange Commission;

(d) Notice of Default or Event of Default — promptly, and in any event within five Business Days after a Responsible Officer becoming aware of the existence of any Default or Event of Default, a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(e) ERISA Matters — promptly, and in any event within five days after a Responsible Officer becoming aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in section 4043(c) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof; or

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, would reasonably be expected to have a Material Adverse Effect; and

(f) Requested Information — with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Company or any Subsidiary or relating to the ability of the Company to perform its obligations hereunder and under the Notes as from time to time may be reasonably requested by any such holder of Notes.

## **7.2. Officer's Certificate.**

Each set of financial statements delivered to a holder of Notes pursuant to Section 7.1(a) or Section 7.1(b) shall be accompanied by a certificate of a Senior Financial Officer setting forth:

(a) Covenant Compliance — the information (including detailed calculations) required in order to establish whether the Company was in compliance with the requirements of Section 10.1 through Section 10.7, inclusive, during the quarterly or annual period covered by the statements then being furnished (including with respect to each such Section, where applicable, the calculations of the maximum or minimum amount, ratio or percentage, as the case may be, permissible under the terms of such Sections, and the calculation of the amount, ratio or percentage then in existence); and

(b) Event of Default — a statement that such officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Company and its Subsidiaries from the beginning of the quarterly or annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence during such period of any condition or event that constitutes a Default or an Event of Default or, if any such condition or event existed or exists (including any such event or condition resulting from the failure of the Company or any Subsidiary to comply with any Environmental Law), specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto.

## **7.3. Inspection.**

The Company shall permit the representatives of each holder of Notes that is an Institutional Investor:

(a) No Default — if no Default or Event of Default then exists, at the expense of such holder and upon reasonable prior notice to the Company, to visit the principal executive office of the Company, to discuss the affairs, finances and accounts of the Company and its Subsidiaries with the Company's officers, and, with the consent of the Company (which consent will not be unreasonably withheld) to visit the other offices and properties of the Company and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) Default — if a Default or Event of Default then exists, at the expense of the Company, to visit and inspect any of the offices or properties of the Company or any Subsidiary, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances, and accounts with their respective officers and independent public accountants (and by this provision the Company authorizes said accountants to discuss the affairs, finances and accounts of the Company and its Subsidiaries), all at such times and as often as may be requested.

## **8. PREPAYMENT OF THE NOTES.**

### **8.1. No Scheduled Prepayments.**

No regularly scheduled prepayments are due on the Notes prior to their stated maturity.

### **8.2. Optional Prepayments with Make-Whole Amount.**

The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes of any series in an amount not less than \$2,000,000 in the aggregate in the case of a partial prepayment, at 100% of the principal amount so prepaid, together with interest accrued to the date of prepayment, plus the Make-Whole Amount determined for the prepayment date with respect to such principal

amount. The Company will give each holder of Notes of the series to be prepaid written notice of each optional prepayment under this Section 8.2 not less than 30 days and not more than 60 days prior to the date fixed for such prepayment. Each such notice shall specify such date, the aggregate principal amount of the Notes of such series to be prepaid on such date, the principal amount of each Note of such series held by such holder to be prepaid (determined in accordance with Section 8.4), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each holder of Notes of the series to be prepaid a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

### **8.3. Mandatory Offer to Prepay Upon Change of Control.**

(a) Notice of Change of Control or Control Event — The Company will, within 15 Business Days after any Responsible Officer has knowledge of the occurrence of any Change of Control or Control Event, give notice of such Change of Control or Control Event to each holder of Notes unless notice in respect of such Change of Control (or the Change of Control contemplated by such Control Event) shall have been given pursuant to subparagraph (b) of this Section 8.3. If a Change of Control has occurred, such notice shall contain and constitute an offer to prepay Notes as described in paragraph (c) of this Section 8.3 and shall be accompanied by the certificate described in paragraph (g) of this Section 8.3.

(b) Condition to Company Action — The Company will not take any action that consummates or finalizes a Change of Control unless (i) at least 15 Business Days prior to such action it shall have given to each holder of Notes written notice containing and constituting an offer to prepay Notes accompanied by the certificate described in paragraph (g) of this Section 8.3, and (ii) subject to the provisions of paragraph (d) below, contemporaneously with such action, it prepaies all Notes required to be prepaid in accordance with this Section 8.3.

(c) Offer to Prepay Notes — The offer to prepay Notes contemplated by paragraphs (a) and (b) of this Section 8.3 shall be an offer to prepay, in accordance with and subject to this Section 8.3, all, but not less than all, of the Notes held by each holder (in this case only, “holder” in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such offer (the “Proposed Prepayment Date”). If such Proposed Prepayment Date is in connection with an offer contemplated by subparagraph (a) of this Section 8.3, such date shall be not less than 30 days and not more than 60 days after the date of such offer.

(d) Acceptance; Rejection — A holder of Notes may accept the offer to prepay made pursuant to this Section 8.3 by causing a notice of such acceptance to be delivered to the Company within 10 Business Days of receipt of the offer to prepay. A failure by a holder of Notes to respond to an offer to prepay made pursuant to this Section 8.3, or to accept an offer as to all of the Notes held by the holder, within such time period shall be deemed to constitute rejection of such offer by such holder.

(e) Prepayment — Prepayment of the Notes to be prepaid pursuant to this Section 8.3 shall be at 100% of the principal amount of such Notes, together with interest on such Notes accrued to the date of prepayment and shall not require the payment of any Make-Whole Amount. The prepayment shall be made on the Proposed Prepayment Date except as provided in paragraph (f) of this Section 8.3.

(f) Deferral Pending Change of Control — The obligation of the Company to prepay Notes pursuant to the offers required by paragraphs (a) and (b) and accepted in accordance with paragraph (d) of this Section 8.3 is subject to the occurrence of the Change of Control in respect of which such offers and acceptances shall have been made. In the event that such Change of Control does not occur on or prior to the Proposed Prepayment Date in respect thereof, the prepayment shall be deferred until and shall be made on the date on which such Change of Control occurs. The Company shall keep each holder of Notes reasonably and timely informed of (i) any such deferral of the date of prepayment, (ii) the date on which

such Change of Control and the prepayment are expected to occur, and (iii) any determination by the Company that efforts to effect such Change of Control have ceased or been abandoned (in which case the offers and acceptances made pursuant to this Section 8.3 in respect of such Change of Control shall be deemed rescinded). Notwithstanding the foregoing, in the event that the prepayment has not been made within 90 days after such Proposed Prepayment Date by virtue of the deferral provided for in this Section 8.3(f), the Company shall make a new offer to prepay in accordance with paragraph (c) of this Section 8.3.

(g) **Officer's Certificate** — Each offer to prepay the Notes pursuant to this Section 8.3 shall be accompanied by a certificate, executed by a Senior Financial Officer of the Company and dated the date of such offer, specifying: (i) the Proposed Prepayment Date, (ii) that such offer is made pursuant to this Section 8.3, (iii) the principal amount of each Note offered to be prepaid, (iv) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date, (v) that the conditions of this Section 8.3 have been fulfilled and (vi) in reasonable detail, the nature and date or proposed date of the Change of Control.

#### **8.4. Allocation of Partial Prepayments.**

In the case of each partial prepayment of the Notes of a series, the principal amount of the Notes of such series to be prepaid shall be allocated among all of the Notes of such series at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

#### **8.5. Maturity; Surrender, etc.**

In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and canceled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

#### **8.6. Purchase of Notes.**

The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes of any series except (a) upon the payment or prepayment of the Notes of a series in accordance with the terms of this Agreement and the Notes or (b) pursuant to an offer to purchase made by the Company or an Affiliate pro rata to the holders of all Notes of a series at the time outstanding upon the same terms and conditions. Any such offer shall provide each holder with sufficient information to enable it to make an informed decision with respect to such offer, and shall remain open for at least 20 Business Days. If the holders of more than 25% of the principal amount of the Notes of a series then outstanding accept such offer, the Company shall promptly notify the remaining holders of such fact and the expiration date for the acceptance by holders of Notes of such series of such offer shall be extended by the number of days necessary to give each such remaining holder at least 5 Business Days from its receipt of such notice to accept such offer. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of Notes pursuant to any provision of this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

#### **8.7. Make-Whole Amount.**

The term "**Make-Whole Amount**" means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal, provided that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

**"Called Principal"** means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

**“Discounted Value”** means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

**“Reinvestment Yield”** means, with respect to the Called Principal of any Note, .50% over the yield to maturity implied by (i) the yields reported, as of 10:00 A.M. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as the “PX Screens” on the Bloomberg Financial Market Service (or such other display as may replace the PX Screens on Bloomberg Financial Market Service) for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. Such implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the actively traded U.S. Treasury security with the maturity closest to and greater than the Remaining Average Life and (2) the actively traded U.S. Treasury security with the maturity closest to and less than the Remaining Average Life.

**“Remaining Average Life”** means, with respect to any Called Principal, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

**“Remaining Scheduled Payments”** means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, provided that if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.2 or 12.1.

**“Settlement Date”** means, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

## **9. AFFIRMATIVE COVENANTS.**

The Company covenants that so long as any of the Notes are outstanding:

### **9.1. Compliance with Law.**

The Company will and will cause each of its Subsidiaries to comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, Environmental Laws, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations would not reasonably be expected, individually or in the aggregate, to have a materially adverse effect on the business, operations, affairs, financial condition, properties or assets of the Company and its Subsidiaries taken as a whole.

### **9.2. Insurance.**

The Company will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated.

### **9.3. Maintenance of Properties.**

The Company will and will cause each of its Subsidiaries to maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, provided that this Section shall not prevent the Company or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Company has concluded that such discontinuance would not, individually or in the aggregate, have a materially adverse effect on the business, operations, affairs, financial condition, properties or assets of the Company and its Subsidiaries taken as a whole.

### **9.4. Payment of Taxes.**

The Company will and will cause each of its Subsidiaries to file all income tax or similar tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies payable by any of them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, provided that neither the Company nor any Subsidiary need pay any such tax or assessment if (i) the amount, applicability or validity thereof is contested by the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Company or such Subsidiary or (ii) the nonpayment of all such taxes and assessments in the aggregate would not reasonably be expected to have a materially adverse effect on the business, operations, affairs, financial condition, properties or assets of the Company and its Subsidiaries taken as a whole.

### **9.5. Corporate Existence, etc.**

Subject to Sections 10.5 and 10.6, the Company will at all times preserve and keep in full force and effect its corporate existence. Subject to Sections 10.5 and 10.6, the Company will at all times preserve and keep in full force and effect the corporate existence of each of its Subsidiaries (unless merged into the Company or a Subsidiary) and all rights and franchises of the Company and its Subsidiaries unless, in the good faith judgment of the Company, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise would not, individually or in the aggregate, have a materially adverse effect on the business, operations, affairs, financial condition, properties or assets of the Company and its Subsidiaries taken as a whole.

## **9.6. Pari Passu Ranking.**

The Company's obligations under this Agreement and under the Notes will, upon issuance of the Notes, and will continue to, at all times until payment in full of the Notes, rank at least *pari passu*, without preference or priority, with all of the Company's other outstanding unsecured and unsubordinated obligations, except for those obligations that are mandatorily afforded priority by operation of law (and not by contract).

## **10. NEGATIVE COVENANTS.**

The Company covenants that so long as any of the Notes are outstanding:

### **10.1. Consolidated Net Debt.**

The Company will not permit the ratio of Consolidated Net Debt to Consolidated EBITDA (for the Company's then most recently completed four fiscal quarters) to be greater than 3.0 to 1.0 as of the last day of any fiscal quarter. If, during the period for which Consolidated EBITDA is being calculated, the Company or a Subsidiary has (i) acquired one or more Persons (or the assets thereof) or (ii) disposed of one or more Subsidiaries (or substantially all of the assets thereof), Consolidated EBITDA shall be calculated on a pro forma basis (including adjustments to reflect consolidation savings) as if all of such acquisitions and all such dispositions had occurred on the first day of such period.

### **10.2. Adjusted Consolidated Net Worth.**

The Company will not permit Adjusted Consolidated Net Worth as of the last day of any fiscal quarter to be less than \$109,000,000 plus the cumulative sum of 25% of Consolidated Net Income (but only if a positive number) for each fiscal quarter ending after December 31, 2003.

### **10.3. Priority Debt.**

The Company will not permit Priority Debt to exceed 15% of Consolidated Total Capitalization as of the last day of any fiscal quarter of the Company.

### **10.4. Liens.**

The Company will not, and will not permit any Subsidiary to, permit to exist, create, assume or incur, directly or indirectly, any Lien on its properties or assets, whether now owned or hereafter acquired, unless the Notes are equally and ratably secured by a Lien on the same property and assets pursuant to an agreement reasonably acceptable to the Required Holders, except:

(a) Liens for taxes, assessments or governmental charges not then due and delinquent or the nonpayment of which is permitted by Section 9.4;

(b) Liens incidental to the conduct of business or the ownership of properties and assets (including landlords', lessors', carriers', operators', warehousemen's, mechanics', materialmen's and other similar Liens) and Liens to secure the performance of bids, tenders, leases or trade contracts, or to secure statutory obligations (including obligations under workers compensation, unemployment insurance and other social security legislation), surety or appeal bonds or other Liens of like general nature incurred in the ordinary course of business and not in connection with the borrowing of money;

(c) any attachment or judgment Lien, unless the judgment it secures has not, within 60 days after the entry thereof, been discharged or execution thereof stayed pending appeal, or has not been discharged within 60 days after the expiration of any such stay;

(d) Liens securing Debt of a Subsidiary owed to the Company or to a Wholly Owned Subsidiary;

(e) Liens existing on property or assets of the Company or any Subsidiary as of the date of this Agreement that are described in Schedule 10.4;

(f) encumbrances in the nature of leases, subleases, zoning restrictions, easements, rights of way, minor survey exceptions and other rights and restrictions of record on the use of real property and defects in title arising or incurred in the ordinary course of business, which, individually and in the aggregate, do not materially detract from the value of such property or assets subject thereto or materially impair the use of the property or assets subject thereto by the Company or such Subsidiary;

(g) Liens (i) existing on property at the time of its acquisition by the Company or a Subsidiary and not created in contemplation thereof, whether or not the Debt secured by such Lien is assumed by the Company or a Subsidiary; or (ii) on property created contemporaneously with its acquisition or within 365 days of the acquisition or completion of construction or development thereof to secure or provide for all or a portion of the purchase price or cost of the acquisition, construction or development of such property after the date of the First Closing; or (iii) existing on property of a Person at the time such Person is merged or consolidated with, or becomes a Subsidiary of, or substantially all of its assets are acquired by, the Company or a Subsidiary and not created in contemplation thereof; provided that in the case of clauses (i), (ii) and (iii) such Liens do not extend to additional property of the Company or any Subsidiary (other than property that is an improvement to or is acquired for specific use in connection with the subject property) and that the aggregate principal amount of Debt secured by each such Lien does not exceed the lesser of (y) the cost of acquisition or construction or (z) fair market value of the property subject thereto (as determined in good faith by one or more officers of the Company to whom authority to enter into the transaction has been delegated by the board of directors);

(h) Liens resulting from extensions, renewals or replacements of Liens permitted by paragraphs (e) and (g), provided that (i) there is no increase in the principal amount or decrease in maturity of the Debt secured thereby at the time of such extension, renewal or replacement, (ii) any new Lien attaches only to the same property theretofore subject to such earlier Lien and (iii) immediately after such extension, renewal or replacement no Default or Event of Default would exist; and

(i) Liens securing Debt not otherwise permitted by paragraphs (a) through (h) of this Section 10.4, provided that Priority Debt shall not exceed 15% of Consolidated Total Capitalization as of the last day of any fiscal quarter of the Company.

#### **10.5. Sale of Assets.**

Except as permitted by Section 10.6, the Company will not, and will not permit any Subsidiary to, sell, lease, transfer or otherwise dispose of, including by way of merger (collectively a "Disposition"), any assets, including capital stock of Subsidiaries, in one or a series of transactions, to any Person, other than:

(a) Dispositions in the ordinary course of business;

(b) Dispositions by a Subsidiary to the Company or a Wholly Owned Subsidiary, provided that Dispositions by a Subsidiary Guarantor shall be made only to another Subsidiary Guarantor; or

(c) Dispositions not otherwise permitted by clauses (a) or (b) of this Section 10.5, provided that (i) the aggregate net book value of all assets so disposed of in any twelve-month period pursuant to this Section 10.5(c) does not exceed 15% of Consolidated Total Assets as of the last day of then most recently ended fiscal quarter and (ii) after giving effect to such transaction, no Default or Event of Default shall exist.

Notwithstanding the foregoing, the Company may, or may permit a Subsidiary to, make a Disposition and the assets subject to such Disposition shall not be subject to or included in the foregoing limitation and computation contained in clause (c) of the preceding sentence to the extent that the net proceeds from such Disposition are within 365 days

of such Disposition (A) reinvested in productive assets to be used in the existing business of the Company or a Subsidiary, or (B) applied to the payment or prepayment of the Notes or any other outstanding Debt of the Company or any Subsidiary ranking *pari passu* with or senior to the Notes (other than Debt owing to the Company, any Subsidiary or any Affiliate or in respect of any revolving credit or similar credit facility providing the Company or any Subsidiary with the right to obtain loans or other extensions of credit from time to time, except to the extent that in connection with such payment of Debt the availability of credit under such credit facility is permanently reduced by an amount not less than the amount of such proceeds applied to the payment of such Debt). For purposes of foregoing clause (B), the Company shall offer to prepay (not less than 30 or more than 60 days following such offer) the Notes on a pro rata basis with such other Debt at a price of 100% of the principal amount of the Notes to be prepaid (without any Make-Whole Amount) together with interest accrued to the date of prepayment; provided that if any holder of the Notes declines such offer, the proceeds that would have been paid to such holder shall be offered pro rata to the other holders of the Notes that have accepted the offer. A failure by a holder of Notes to respond in writing not later than 10 Business Days prior to the proposed prepayment date to an offer to prepay made pursuant to this Section 10.5 shall be deemed to constitute a rejection of such offer by such holder.

#### **10.6. Mergers, Consolidations, etc.**

The Company will not, and will not permit any Subsidiary to, consolidate with or merge with any other Person or convey, transfer, sell or lease all or substantially all of its assets in a single transaction or series of transactions to any Person except that:

(a) the Company may consolidate or merge with any other Person or convey, transfer, sell or lease all or substantially all of its assets in a single transaction or series of transactions to any Person, provided that:

(i) the successor formed by such consolidation or the survivor of such merger or the Person that acquires by conveyance, transfer, sale or lease all or substantially all of the assets of the Company as an entirety, as the case may be, is a solvent Person organized and existing under the laws of the United States or any state thereof (including the District of Columbia), and, if the Company is not such Person, (A) shall have executed and delivered to each holder of any Notes its assumption of the due and punctual performance and observance of each covenant and condition of this Agreement and the Notes and (B) shall have caused to be delivered to each holder of any Notes an opinion of nationally recognized independent counsel or other independent counsel reasonably satisfactory to the Required Holders, to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms and comply with the terms hereof; and

(ii) after giving effect to such transaction, no Default or Event of Default shall exist; and

(b) provided that immediately before and after giving effect thereto, there shall exist no Default or Event of Default:

(i) any Subsidiary Guarantor may (x) merge into the Company (provided that the Company is the surviving corporation) or another Subsidiary Guarantor or (y) sell, transfer or lease all or any part of its assets to the Company or another Subsidiary Guarantor, or (z) merge or consolidate with, or sell, transfer or lease all or substantially all of its assets to, any Person in a transaction (1) that is permitted by Section 10.5, or (2) as a result of which, such Person becomes a Wholly Owned Subsidiary and executes and delivers to each holder of any Notes its assumption of the due and punctual performance and observance of each covenant and condition of the Subsidiary Guaranty, together with the certificate and opinion referred to in Section 10.7(b) and (c); and

(ii) any Subsidiary that is not a Subsidiary Guarantor may (x) merge into the Company (provided that the Company is the surviving corporation) or a Wholly Owned Subsidiary or (y) sell, transfer or lease all or any part of its assets to the Company or a Wholly Owned Subsidiary, or (z) merge or consolidate with, or sell, transfer or lease all or substantially all of its assets to, any Person in a transaction that is permitted by Section 10.5 or, as a result of which, such Person becomes a Wholly Owned Subsidiary.

No such conveyance, transfer, sale or lease of all or substantially all of the assets of the Company shall have the effect of releasing the Company or any successor corporation that shall theretofore have become such in the manner prescribed in this Section 10.6 from its liability under this Agreement or the Notes.

#### **10.7. Subsidiary Guaranty.**

The Company will not permit any Subsidiary to become a guarantor or obligor of Debt owed to banks under the Credit Agreement unless such Subsidiary is, or within 10 days becomes, a party to the Subsidiary Guaranty and, as a part thereof, delivers to each of the holders:

(a) a copy of an executed joinder to the Subsidiary Guaranty;

(b) a certificate signed by a Responsible Officer of the Company confirming the accuracy of the representations and warranties in Sections 5.2, 5.6, 5.7 and 5.19, with respect to such Subsidiary and the Subsidiary Guaranty, as applicable; and

(c) an opinion of counsel (who may be counsel for the Company) reasonably satisfactory to the Required Holders addressed to each holder of the Notes to the effect that the Subsidiary Guaranty of such Person has been duly authorized, executed and delivered and that the Subsidiary Guaranty constitutes the legal, valid and binding contract and agreement of such Person enforceable in accordance with its terms, except as an enforcement of such terms may be limited by bankruptcy, insolvency, fraudulent conveyance and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

#### **10.8. Nature of Business.**

The Company will not, and will not permit any Subsidiary to, engage in any business if, as a result, the general nature of the business in which the Company and its Subsidiaries, taken as a whole, would then be engaged would be substantially changed from the general nature of the business in which the Company and its Subsidiaries, taken as a whole, are engaged on the date of this Agreement as described in the Memorandum.

#### **10.9. Transactions with Affiliates.**

The Company will not, and will not permit any Subsidiary to, enter into directly or indirectly any Material transaction or Material group of related transactions (including the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Company or another Subsidiary), except pursuant to the reasonable requirements of the Company's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Company or such Subsidiary than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate.

#### **11. EVENTS OF DEFAULT.**

An "Event of Default" shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

- (b) the Company defaults in the payment of any interest on any Note for more than five Business Days after the same becomes due and payable; or
- (c) the Company defaults in the performance of or compliance with any term contained in Section 7.1(d) or Sections 10.1 through 10.9; or
- (d) the Company defaults in the performance of or compliance with any term contained herein (other than those referred to in paragraphs (a), (b) and (c) of this Section 11) and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Company receiving written notice of such default from any holder of a Note (any such written notice to be identified as a “notice of default” and to refer specifically to this paragraph (d) of Section 11); or
- (e) any representation or warranty made in writing by or on behalf of the Company or any Subsidiary Guarantor or by any officer of the Company or any Subsidiary Guarantor in this Agreement, the Subsidiary Guaranty or in any writing furnished in connection with the transactions contemplated hereby or thereby proves to have been false or incorrect in any material respect on the date as of which made; or
- (f) (i) the Company or any Significant Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Debt that is outstanding in an aggregate principal amount of at least \$15,000,000 beyond any period of grace provided with respect thereto, or (ii) the Company or any Significant Subsidiary is in default in the performance of or compliance with any term of any evidence of any Debt that is outstanding in an aggregate principal amount of at least \$15,000,000 or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Debt has become, or has been declared, due and payable before its stated maturity or before its regularly scheduled dates of payment; or
- (g) the Company or any Significant Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or
- (h) a court or governmental authority of competent jurisdiction enters an order appointing, without consent by the Company or any Significant Subsidiary, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any Significant Subsidiary, or any such petition shall be filed against the Company or any Significant Subsidiary and such petition shall not be dismissed within 60 days; or
- (i) a final judgment or judgments for the payment of money aggregating in excess of \$15,000,000 are rendered against one or more of the Company and its Significant Subsidiaries, which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or
- (j) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is

reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate “amount of unfunded benefit liabilities” (within the meaning of section 4001(a)(18) of ERISA) under all Plans determined in accordance with Title IV of ERISA, shall exceed \$15,000,000, (iv) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, would reasonably be expected to have a Material Adverse Effect; or

(k) the Subsidiary Guaranty ceases to be in full force and effect, except as provided in Section 22, or is declared to be null and void in whole or in material part by a court or other governmental or regulatory authority having jurisdiction or the validity or enforceability thereof shall be contested by the Company or any Subsidiary Guarantor or any of them renounces any of the same or denies that it has any or further liability thereunder.

As used in Section 11(j), the terms “employee benefit plan” and “employee welfare benefit plan” shall have the respective meanings assigned to such terms in section 3 of ERISA.

## **12. REMEDIES ON DEFAULT, ETC.**

### **12.1. Acceleration.**

(a) If an Event of Default with respect to the Company described in paragraph (g) or (h) of Section 11 (other than an Event of Default described in clause (i) of paragraph (g) or described in clause (vi) of paragraph (g) by virtue of the fact that such clause encompasses clause (i) of paragraph (g)) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, holders of a majority or more in principal amount of the Notes at the time outstanding may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in paragraph (a) or (b) of Section 11 has occurred and is continuing, any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable under this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus (x) all accrued and unpaid interest thereon and (y) the Make-Whole Amount determined in respect of such principal amount (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

## **12.2. Other Remedies.**

If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

## **12.3. Rescission.**

At any time after any Notes have been declared due and payable pursuant to clause (b) or (c) of Section 12.1, the holders of a majority in principal amount of the Notes then outstanding, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Notes, at the Default Rate, (b) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 17, and (c) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

## **12.4. No Waivers or Election of Remedies, Expenses, etc.**

No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or by any Note upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including reasonable attorneys' fees, expenses and disbursements.

## **13. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.**

### **13.1. Registration of Notes.**

The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Note that is an Institutional Investor, promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

### **13.2. Transfer and Exchange of Notes.**

Upon surrender of any Note at the principal executive office of the Company for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Note or his attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof), the Company shall execute and deliver within five Business Days, at the Company's expense (except as provided below), one or more new Notes (as requested by the holder thereof) of the same series in exchange therefor, in an aggregate

principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of Exhibit 1(a), 1(b) or 1(c), as appropriate. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$100,000, provided that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than \$100,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representations and agreements set forth in Section 6.

### **13.3. Replacement of Notes.**

Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of such Note is, or is a nominee for, an original Purchaser or any other Institutional Investor, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Company at its own expense shall execute and deliver within five Business Days, in lieu thereof, a new Note of the same series, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

## **14. PAYMENTS ON NOTES.**

### **14.1. Place of Payment.**

Subject to Section 14.2, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made in Chicago, Illinois at the principal office of LaSalle Bank National Association in such jurisdiction. The Company may at any time, by notice to each holder of a Note, change the place of payment of the Notes so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

### **14.2. Home Office Payment.**

So long as you or your nominee shall be the holder of any Note, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, and interest by the method and at the address specified for such purpose below your name in Schedule A, or by such other method or at such other address as you shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, you shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.1. Prior to any sale or other disposition of any Note held by you or your nominee you will, at your election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 14.2 to any Institutional Investor that is the direct or indirect transferee of any Note purchased by you under this Agreement and that has made the same agreement relating to such Note as you have made in this Section 14.2.

## **15. EXPENSES, ETC.**

### **15.1. Transaction Expenses.**

Whether or not the transactions contemplated hereby or by the Subsidiary Guaranty are consummated, the Company will pay all costs and expenses (including reasonable attorneys' fees of a special counsel and, if reasonably required, local or other counsel) incurred by you and each Other Purchaser or holder of a Note in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement, the Notes or the Subsidiary Guaranty (whether or not such amendment, waiver or consent becomes effective), including: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement, the Notes or the Subsidiary Guaranty, or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement, the Notes or the Subsidiary Guaranty, or by reason of being a holder of any Note, (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby, by the Notes and by the Subsidiary Guaranty, and (c) the costs and expenses incurred in connection with (i) a merger, consolidation or similar transaction, (ii) the delivery of a Subsidiary Guaranty pursuant to Section 10.7 or (iii) the release of a Subsidiary Guarantor pursuant to Section 22. The Company will pay, and will save you and each other holder of a Note harmless from, all claims in respect of any fees, costs or expenses if any, of brokers and finders (other than those retained by you).

### **15.2. Survival.**

The obligations of the Company under this Section 15 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or the Notes, and the termination of this Agreement.

## **16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.**

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by you of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of you or any other holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement and the Notes embody the entire agreement and understanding between you and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

## **17. AMENDMENT AND WAIVER.**

### **17.1. Requirements.**

This Agreement, the Notes and the Subsidiary Guaranty may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Section 1, 2, 3, 4, 5, 6 or 21 hereof, or any defined term (as it is used therein), will be effective as to you unless consented to by you in writing, and (b) no such amendment or waiver may, without the written consent of the holder of each Note at the time outstanding affected thereby, (i) subject to the provisions of Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest or of the Make-Whole Amount on, the Notes, (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any such amendment or waiver, or (iii) amend any of Sections 8, 11(a), 11(b), 12, 17 or 20.

## 17.2. Solicitation of Holders of Notes.

(a) Solicitation. The Company will provide each holder of the Notes (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 17 to each holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Notes.

(b) Payment. The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any holder of Notes as consideration for or as an inducement to the entering into by any holder of Notes or any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each holder of Notes then outstanding even if such holder did not consent to such waiver or amendment.

(c) Consent in Contemplation of Transfer. Any consent made pursuant to this Section 17 by a holder of Notes that has transferred or has agreed to transfer its Notes to the Company, any Subsidiary or any Affiliate of the Company and has provided or has agreed to provide such written consent as a condition to such transfer shall be void and of no force or effect except solely as to such holder, and any amendments effected or waivers granted or to be effected or granted that would not have been or would not be so effected or granted but for such consent (and the consents of other holders of Notes that were acquired under the same or similar conditions) shall be void and of no force or effect except solely as to such holder.

## 17.3. Binding Effect, etc.

Any amendment or waiver consented to as provided in this Section 17 applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and the holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any holder of such Note. As used herein, the term "this Agreement" or "the Agreement" and references thereto shall mean this Note Purchase Agreement as it may from time to time be amended or supplemented.

## 17.4. Notes held by Company, etc.

Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or the Notes, or have directed the taking of any action provided herein or in the Notes to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

## 18. NOTICES.

All notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

(i) if to you or your nominee, to you or it at the address specified for such communications in Schedule A, or at such other address as you or it shall have specified to the Company in writing,

- (ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or
- (iii) if to the Company or any Subsidiary Guarantor, to the Company at its address set forth at the beginning hereof to the attention of the Chief Financial Officer, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this Section 18 will be deemed given only when actually received.

#### **19. REPRODUCTION OF DOCUMENTS.**

This Agreement and all documents relating thereto, including (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by you at a Closing (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to you, may be reproduced by you by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and you may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by you in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit the Company or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

#### **20. CONFIDENTIAL INFORMATION.**

For the purposes of this Section 20, "Confidential Information" means information delivered or disclosed to you with respect to the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by you as being confidential information of the Company or such Subsidiary, provided that such term does not include information that (a) was publicly known or otherwise known to you prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by you or any Person acting on your behalf, (c) otherwise becomes known to you other than through disclosure by the Company or any Subsidiary, or (d) constitutes financial statements delivered to you under Section 7.1 that are otherwise publicly available. You will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by you in good faith to protect confidential information of third parties delivered to you, provided that you may deliver or disclose Confidential Information to (i) your directors, trustees, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by your Notes), (ii) your financial advisors and other professional advisors whose duties require them to hold confidential the Confidential Information substantially in accordance with the terms of this Section 20, (iii) any other holder of any Note, (iv) any Institutional Investor to which you sell or offer to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (v) any Person from which you offer to purchase any security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (vi) any federal or state regulatory authority having jurisdiction over you, (vii) the National Association of Insurance Commissioners or any similar organization, or any nationally recognized rating agency that requires access to information about your investment portfolio or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to you, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which you are a party or (z) if an Event of Default has occurred and is continuing, to the extent you may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under your Notes and this Agreement. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20 as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying the provisions of this Section 20.

## **21. SUBSTITUTION OF PURCHASER.**

You shall have the right to substitute any one of your Affiliates as the purchaser of the Notes that you have agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both you and such Affiliate, shall contain such Affiliate's agreement to be bound by this Agreement and shall contain a confirmation by such Affiliate of the accuracy with respect to it of the representations set forth in Section 6. Upon receipt of such notice, wherever the word "you" is used in this Agreement (other than in this Section 21), such word shall be deemed to refer to such Affiliate in lieu of you. In the event that such Affiliate is so substituted as a purchaser hereunder and such Affiliate thereafter transfers to you all of the Notes then held by such Affiliate, upon receipt by the Company of notice of such transfer, wherever the word "you" is used in this Agreement (other than in this Section 21), such word shall no longer be deemed to refer to such Affiliate, but shall refer to you, and you shall have all the rights of an original holder of the Notes under this Agreement.

## **22. RELEASE OF SUBSIDIARY GUARANTOR.**

You and each subsequent holder of a Note agree to release any Subsidiary Guarantor from the Subsidiary Guaranty upon written request of the Company if (i) such Subsidiary Guarantor ceases to be such as a result of a Disposition permitted by Sections 10.5 or 10.6 or (ii) such Subsidiary Guarantor has been or, concurrently with the release by the holders of Notes, will be released as guarantor, or ceases to be an obligor, under and in respect of the Credit Agreement and any other Debt guaranteed by such Subsidiary or as to which such Subsidiary is obligated; provided, however, that you and each subsequent holder will not be required to release a Subsidiary Guarantor from the Subsidiary Guaranty under the circumstances contemplated by clause (ii), if (A) immediately before or after giving effect to such release there shall exist a Default or Event of Default, (B) such release is part of a plan of financing that contemplates such Subsidiary Guarantor guaranteeing, or being directly or indirectly obligated for, any other Debt of the Company, or (C) any fee or other consideration is paid or given to any holder of Debt in connection with such release, and each holder of a Note does not receive equivalent consideration on a pro rata basis. Your obligation to release a Subsidiary Guarantor from the Subsidiary Guaranty is conditioned upon your prior receipt of a certificate from a Senior Financial Officer of the Company stating that none of the circumstances described in clauses (A), (B) and (C) above are true.

## **23. MISCELLANEOUS.**

### **23.1. Successors and Assigns.**

All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including any subsequent holder of a Note) whether so expressed or not.

### **23.2. Payments Due on Non-Business Days.**

Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal of or Make-Whole Amount or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day.

### **23.3. Severability.**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

**23.4. Construction.**

Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

**23.5. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

**23.6. Governing Law.**

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of Illinois excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

**23.7. Submission to Jurisdiction.**

**Any litigation based hereon, or arising out of, under or in connection with this Agreement or the Notes may be brought and maintained in the courts of the State of Illinois or in the United States District Court for the Northern District of Illinois. The Company expressly and irrevocably submits to the jurisdiction of the courts of the State of Illinois and of the United States District Court for the Northern District of Illinois for the purpose of any such litigation as set forth above. The Company further irrevocably consents to the service of process by registered mail, postage prepaid, to the address specified in Section 18 or by personal service within or without the State of Illinois. The Company expressly and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any such litigation brought in any such court referred to above and any claim that any such litigation has been brought in an inconvenient forum.**

**23.8. Waiver of Jury Trial.**

**The Company waives any right to a trial by jury in any action or proceeding to enforce or defend any rights under this Agreement or the Notes or under any amendment, instrument, document or Agreement delivered or that may in the future be delivered in connection herewith and agrees that any such action or proceeding shall be tried before a court and not before a jury.**

\* \* \* \* \*

If you are in agreement with the foregoing, please sign the form of agreement on the accompanying counterpart of this Agreement and return it to the Company, whereupon the foregoing shall become a binding agreement between you and the Company.

Very truly yours,

SYPRIS SOLUTIONS, INC.

By: /s/ David D. Johnson

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Name: David D. Johnson

Title: Vice President and CFO

The foregoing is agreed to as of the date thereof.

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

By: /s/ Ellen I. Whitaker

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Name: Ellen I. Whitaker  
Title: Director, Fixed Income Investments

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

By: CIGNA Investments, Inc. (authorized agent)

By: /s/ David M. Cass

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Name: David M. Cass  
Title: Managing Director

LIFE INSURANCE COMPANY OF NORTH AMERICA

By: CIGNA Investments, Inc. (authorized agent)

By: /s/ David M. Cass

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Name: David M. Cass  
Title: Managing Director

JEFFERSON PILOT FINANCIAL INSURANCE COMPANY

By: /s/ James E. McDonald, Jr.

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Name: JamesE.McDonald,Jr.  
Title: Vice President

JEFFERSON-PILOT LIFE INSURANCE COMPANY

By: /s/ James E. McDonald, Jr.

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Name: JamesE.McDonald,Jr.  
Title: Vice President

JEFFERSON PILOT LIFEAMERICA INSURANCE COMPANY

By: /s/ James E. McDonald, Jr.

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Name: James E. McDonald, Jr.  
Title: Vice President

DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

**“Adjusted Consolidated Net Worth”** means, as of any date, consolidated stockholders’ equity of the Company and its Subsidiaries on such date, less (a) minority interests in Subsidiaries and (b) the amount by which outstanding Restricted Investments on such date exceed 10% of consolidated stockholders’ equity of the Company and its Subsidiaries on such date determined on a consolidated basis in accordance with GAAP.

**“Affiliate”** means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. As used in this definition, **“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an “Affiliate” is a reference to an Affiliate of the Company.

**“Anti-Terrorism Order”** means Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)).

**“Business Day”** means (a) for the purposes of Section 8.7 only, any day other than a Saturday, a Sunday or a day on which commercial banks in New York City are required or authorized to be closed, and (b) for the purposes of any other provision of this Agreement, any day other than a Saturday, a Sunday or a day on which commercial banks in Chicago, Illinois, New York City or Louisville, Kentucky are required or authorized to be closed.

**“Capital Lease”** means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

**“Change of Control”** means the acquisition, directly or indirectly, through purchase or otherwise by any Person, or group of Persons acting in concert, other than Robert E. Gill, Jeffrey T. Gill or R. Scott Gill, members of their immediate family and their lineal descendants, or trusts or any other entity created for their benefit, in one or more transactions, of beneficial ownership or control of securities representing more than 50% of the voting power of the Company’s Voting Stock (including the agreement to act in concert by any such group of Persons who beneficially own or control securities representing more than 50% of the voting power of the Company’s Voting Stock).

**“Closings”** is defined in Section 3.

**“Code”** means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

**“Company”** means Sypris Solutions, Inc., a Delaware corporation.

**“Confidential Information”** is defined in Section 20.

**“Consolidated Debt”** means, as of any date, outstanding Debt of the Company and its Subsidiaries as of such date, determined on a consolidated basis in accordance with GAAP.

**“Consolidated EBITDA”** means, for any period, the sum of Consolidated Net Income for such period, plus, to the extent deducted in determining such Consolidated Net Income, (i) federal, state, local and foreign

income, value added and similar taxes, (ii) Consolidated Interest Expense, (iii) depreciation and amortization expense and (iv) other non-cash expenses, in each case determined on a consolidated basis in accordance with GAAP.

**“Consolidated Interest Expense”** means, for any period, the consolidated interest expense of the Company and its Subsidiaries for such period determined in accordance with GAAP.

**“Consolidated Net Debt”** means, as of any date, outstanding Debt of the Company and its Subsidiaries as of such date less cash and cash equivalents of the Company and its Subsidiaries as of such date, each as determined on a consolidated basis in accordance with GAAP.

**“Consolidated Net Income”** means, for any period, the net income or loss of the Company and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

**“Consolidated Total Assets”** means, as of any date, the assets and properties of the Company and its Subsidiaries as of such date, determined on a consolidated basis in accordance with GAAP.

**“Consolidated Total Capitalization”** means, as of any date, the sum of Consolidated Debt and Adjusted Consolidated Net Worth as of such date.

**“Control Event”** means:

(a) the execution by the Company or any of its Subsidiaries or Affiliates of any agreement with respect to any proposed transaction or event or series of transactions or events that, individually or in the aggregate, may reasonably be expected to result in a Change of Control, or

(b) the execution of any written agreement that, when fully performed by the parties thereto, would result in a Change of Control.

**“Credit Agreement”** means the 1999 Amended and Restated Loan Agreement dated as of October 27, 1999 among the Company, the Subsidiaries of the Company named as guarantors therein, Bank One, Kentucky, NA, as Agent Bank, and the other lenders party thereto, as amended by the 2000A Amendment to Loan Documents dated as of November 9, 2000, the 2001A Amendment to Loan Documents dated as of February 15, 2001, the 2002A Amendment to Loan Documents dated as of January 1, 2002, the 2002B Amendment to Loan Documents dated as of July 3, 2002 and the 2003A Amendment to Loan Documents dated as of October 16, 2003, and as such agreement may be hereafter amended, modified, restated, supplemented, replaced, refinanced, increased or reduced from time to time, and any successor credit agreement or similar facility.

**“Debt”** with respect to any Person means, at any time, without duplication,

(a) its liabilities for borrowed money;

(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable and other accrued liabilities arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capital Leases;

(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities); and

(e) any Guaranty of such Person with respect to liabilities of a type described in any of clauses (a) through (d) hereof.

**“Default”** means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**“Default Rate”** means that rate of interest that is the greater of (i) 2% per annum above the rate of interest stated in clause (a) of the first paragraph of the Notes or (ii) 2% over the rate of interest publicly announced by LaSalle Bank National Association as its “base” or “prime” rate.

**“Disposition”** is defined in Section 10.5.

**“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 but not limited to those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under section 414 of the Code.

**“Event of Default”** is defined in Section 11.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended.

**“First Closing”** is defined in Section 3.

**“GAAP”** means generally accepted accounting principles as in effect from time to time in the United States of America.

**“Governmental Authority”** means

(a) the government of

(i) the United States of America or any state or other political subdivision thereof, or

(ii) any jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

**“Guaranty”** means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including obligations incurred through an agreement, contingent or otherwise, by such Person:

(a) to purchase such indebtedness or obligation or any property constituting security therefor;

(b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;

(c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or

(d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guaranty, the indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

**“Hazardous Material”** means any and all pollutants, toxic or hazardous wastes or any other substances that might pose a hazard to health or safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage, or filtration of which is or shall be, prohibited or penalized by any applicable law (including, asbestos, urea formaldehyde foam insulation and polychlorinated biphenyls).

**“holder”** means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1.

**“INHAM Exemption”** is defined in Section 6.2(e).

**“Institutional Investor”** means (a) any original purchaser of a Note, (b) any holder of more than \$2,000,000 in aggregate principal amount of the Notes at the time outstanding, and (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form.

**“Investments”** means all investments made, in cash or by delivery of property, directly or indirectly, by any Person, in any other Person, whether by acquisition of shares of capital stock, indebtedness or other obligations or securities or by loan, Guaranty, advance, capital contribution or otherwise.

**“Lien”** means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

**“Make-Whole Amount”** is defined in Section 8.7.

**“Material”** means material in relation to the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole.

**“Material Adverse Effect”** means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole, or (b) the ability of the Company to perform its obligations under this Agreement and the Notes, or (c) the ability of the Subsidiary Guarantors, taken as a whole, to perform their obligations under the Subsidiary Guaranty, or (d) the validity or enforceability of this Agreement, the Notes or the Subsidiary Guaranty.

**“Memorandum”** is defined in Section 5.3.

**“Multiemployer Plan”** means any Plan that is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

**“NAIC Annual Statement”** is defined in Section 6.2.

**“Notes”** is defined in Section 1.

**“Officer’s Certificate”** means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

**“Other Purchasers”** is defined in Section 2.

**“PBG”** means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

**“Person”** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

**“Plan”** means an “employee benefit plan” (as defined in section 3(3) of ERISA) that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

**“Priority Debt”** means, as of any date, the sum (without duplication) of (a) outstanding unsecured Debt of Subsidiaries other than (i) Debt owed to the Company or a Wholly Owned Subsidiary, (ii) any Guaranty of any Debt of the Company by any Subsidiary Guarantor, (iii) Debt of any Subsidiary Guarantor owed to the lenders under the Credit Agreement, and (iv) Debt of a Person that is outstanding at the time it becomes a Subsidiary, provided that such Debt was not incurred in contemplation of such Person becoming a Subsidiary, and (b) Debt of the Company and its Subsidiaries secured by Liens not otherwise permitted by the introductory paragraph of Section 10.4 or Sections 10.4(a) through (h).

**“property”** or **“properties”** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

**“Purchaser”** means each purchaser listed in Schedule A.

**“QPAM Exemption”** is defined in Section 6.2(d).

**“Required Holders”** means, at any time, the holders of at least a majority in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates).

**“Responsible Officer”** means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this agreement.

**“Restricted Investments”** means all Investments of the Company and its Subsidiaries, other than:

- (a) property or assets to be used or consumed in the ordinary course of business;
- (b) assets arising from the sale of goods or services in the ordinary course of business;
- (c) Investments in Subsidiaries or in any Person that, as a result thereof, becomes a Subsidiary;
- (d) Investments in common stock of the Company;

(e) Investments existing as of the date of this Agreement that are listed in the attached Schedule B-1 and any earnings thereon; and

(f) Investments in:

(i) obligations, maturing within one year from the date of acquisition, of or fully guaranteed by the United States of America, or an agency thereof, or Canada, or any province thereof;

(ii) state, or municipal securities having an effective maturity within one year from the date of acquisition that are rated in one of the top two rating classifications by at least one nationally recognized rating agency;

(iii) certificates of deposit, banker's acceptances or demand deposits (A) maturing more than 30 days after but within one year from the date of acquisition thereof and issued by commercial banks whose long-term unsecured debt obligations (or the long-term unsecured debt obligations of the bank holding company owning all of the capital stock of such bank) are rated in one of the top two rating classifications by at least one nationally recognized rating agency at the time of making such investment ("**Acceptable Bank**"), (B) maturing 30 days or less from the date of issuance thereof, issued by a commercial bank rated at least investment grade by at least one nationally recognized rating agency at the time of making such investment or (C) that constitute the normal operating checking accounts of the Company and its Subsidiaries;

(iv) commercial paper maturing within 270 days from the date of issuance that, at the time of acquisition, is rated in one of the top two rating classifications by at least one credit rating agency of recognized national standing;

(v) Repurchase Agreements; and

(vi) money market instrument programs that are properly classified as current assets in accordance with GAAP.

As used in this definition of Restricted Investments,

**"Acceptable Broker-Dealer"** means any Person other than a natural person (i) that is registered as a broker or dealer pursuant to the Exchange Act and (ii) whose long-term unsecured debt obligations are rated in one of the top two rating classifications by at least one nationally recognized rating agency.

**"Repurchase Agreement"** means any written agreement

(a) that provides for (i) the transfer of one or more United States Governmental Securities in an aggregate principal amount at least equal to the amount of the Transfer Price (defined below) to the Company or any of its Subsidiaries from an Acceptable Bank or an Acceptable Broker-Dealer against a transfer of funds (the "**Transfer Price**") by the Company or such Subsidiary to such Acceptable Bank or Acceptable Broker-Dealer, and (ii) a simultaneous agreement by the Company or such Subsidiary, in connection with such transfer of funds, to transfer to such Acceptable Bank or Acceptable Broker-Dealer the same or substantially similar United States Governmental Securities for a price not less than the Transfer Price plus a reasonable return thereon at a date certain not later than 365 days after such transfer of funds,

(b) in respect of which the Company or such Subsidiary has the right, whether by contract or pursuant to applicable law, to liquidate such agreement upon the occurrence of any default thereunder, and

(c) in connection with which the Company or such Subsidiary, or an agent thereof, shall have taken all action required by applicable law or regulations to perfect a Lien in such United States Governmental Securities.

**“United States Governmental Security”** means any direct obligation of, or obligation guaranteed by, the United States of America, or any agency controlled or supervised by or acting as an instrumentality of the United States of America pursuant to authority granted by the Congress of the United States of America, so long as such obligation or guarantee shall have the benefit of the full faith and credit of the United States of America which shall have been pledged pursuant to authority granted by the Congress of the United States of America.

**“Second Closing”** is defined in Section 3.

**“Securities Act”** means the Securities Act of 1933, as amended from time to time.

**“Senior Financial Officer”** means the chief financial officer, principal accounting officer, treasurer or controller of the Company.

**“Series A Notes”** is defined in Section 1.

**“Series B Notes”** is defined in Section 1.

**“Series C Notes”** is defined in Section 1.

**“Significant Subsidiary”** means, as of the date of determination, any Subsidiary that would at such time account for more than 10% of (i) Consolidated Total Assets as of the end of the most recently completed fiscal quarter or (ii) consolidated revenue of the Company and its Subsidiaries for the four fiscal quarters ending as of the end of the most recently completed fiscal quarter.

**“Source”** is defined in Section 6.2.

**“Subsidiary”** means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a “Subsidiary” is a reference to a Subsidiary of the Company.

**“Subsidiary Guarantor”** is defined in Section 1.

**“Subsidiary Guaranty”** is defined in Section 1.

**“Third Closing”** is defined in Section 3.

**“this Agreement” or “the Agreement”** is defined in Section 17.3.

**“USA Patriot Act”** means Public Law 107-56 of the United States of America, United and Strengthening America by Providing Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.

**“Voting Stock”** means the capital stock of any class or classes of a corporation, or equivalent interests in any other Person, having power under ordinary circumstances to vote for the election of members of the board of directors of such corporation, or person performing similar functions (irrespective of whether or not at the time stock of any of the class or classes, or equivalent interests, shall have or might have special voting power or rights by reason of the happening of any contingency).

**“Wholly Owned Subsidiary”** means, at any time, any Subsidiary 100% of all of the equity interests (except directors’ qualifying shares) and voting interests of which are owned by any one or more of the Company and the Company’s other Wholly Owned Subsidiaries at such time.

Certain exhibits and schedules have been omitted because they are not material. Copies of such omitted exhibits and schedules will be supplementally furnished to the Commission upon request

## CERTIFICATION PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT OF 2002

I, Jeffrey T. Gill, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Sypris Solutions, 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(s) 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)) for the registrant and 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) 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
  - (c) 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(s) 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: August 3, 2004

By:

/s/ Jeffrey T. Gill

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Jeffrey T. Gill  
President & Chief Executive Officer



